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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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CINTHIA THEVENIN, individually, and as wife of EDSON THEVENIN,  
Decedent, and as Administratrix of the Estate of EDSON THEVENIN,  
and as mother and natural guardian of Infant N.T. and as mother and  
natural guardian of Infant Z.T.,

Plaintiffs

against

THE CITY OF TROY and SERGEANT RANDALL FRENCH

Defendants

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RECORD OF EXHIBITS "F" – "H"

PART 2

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FITZGERALD MORRIS BAKER FRITH PC  
Attorneys for Defendants  
P.O. Box 2017  
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(518) 745-1400

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT COURT OF NEW YORK

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5 EDSON THEVENIN, Decedent, and as Administratrix of  
6 the Estate of EDSON THEVENIN, and as mother and  
7 natural guardian of Infant N.T., and as mother and  
8 natural guardian of Infant Z.T.,

9 Plaintiffs,

10 -against-

11 Index No.  
12 16-CV-1115 (NAM/DJS)

13 THE CITY OF TROY and SERGEANT RANDALL FRENCH,

14 Defendants.  
15 -----

16 STENOGRAPHIC MINUTES OF DEPOSITION conducted of  
17 MATTHEW MONTANINO, pursuant to Agreement, on the 26th day  
18 of July, 2017, at the law offices of Fitzgerald Morris  
19 Baker Firth, 16 Pearl Street, P.O. Box 2017, Glens Falls,  
20 New York, commencing at 10:13 a.m.; before MICHELE  
21 AMBROSINO, a Shorthand Reporter and Notary Public within  
22 and for the State of New York.  
23  
24

1 APPEARANCES:

2 On behalf of Plaintiffs:

3 HARFENIST KRAUT & PERLSTEIN, LLP  
4 3000 Marcus Avenue, Suite 11042  
5 Lake Success, New York 11042  
6 526.355.9612

7 BY: NEIL TORCZYNER, ESQ.  
8 Ntorczyner@hkplaw.com

9 On behalf of Defendants:

10 FITZGERALD MORRIS BAKER FIRTH  
11 16 Pearl Street  
12 P.O. Box 2017  
13 Glens Falls, New York 12801  
14 518.745.1400

15 BY: JOHN D. ASPLAND, JR.  
16 Jda@fmbf.law.com  
17  
18  
19  
20  
21  
22  
23  
24

1           IT IS HEREBY STIPULATED AND AGREED by and  
2       between the attorneys for the respective parties herein,  
3       that filing and sealing be and the same are hereby  
4       waived.

5  
6  
7           IT IS FURTHER STIPULATED AND AGREED that all  
8       objections, except as to the form of the question, shall  
9       be reserved to the time of the trial.

10  
11  
12          IT IS FURTHER STIPULATED AND AGREED that the  
13       within deposition may be signed and sworn to before any  
14       officer authorized to administer an oath, with the same  
15       force and effect as if signed and sworn to before the  
16       Court.



1 MATTHEW MONTANINO,  
2 (first duly sworn by the Notary Public,  
3 was examined and testified as follows:)

4 MR. TORCZYNER: We have agreement of counsel  
5 prior to the commencement of the deposition that because  
6 Captain Montanino is a member of the police department,  
7 and in order to protect his personal privacy, we are not  
8 seeking your home address. The address that we'd like  
9 you to give for the record is the official address of the  
10 police department. Counsel has agreed to accept service  
11 of any subpoenas on your behalf should you leave the  
12 employ of the police department prior to the termination  
13 this case, we would then ask for your last known address  
14 so that you could be served for proper process. So  
15 stipulated?

16 MR. ASPLAND: Agreed.

17 MR. TORCZYNER: Thank you.

18 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

19 BY MR. TORCZYNER:

20 Q. Good morning.

21 A. Good morning.

22 Q. Can you please give the official business address  
23 for the Troy Police Department?

24 A. 55 State Street, Troy, New York.

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1 Q. Good morning.

2 A. Good morning.

3 Q. I'm going to be asking you a series of questions  
4 relating to an incident that took place  
5 April 17th of 2016 involving Edson Thevenin.

6 You are familiar with that name; correct?

7 A. Yes, I am.

8 Q. The questions that I'm going to ask you are all  
9 going to be verbal, and it's going to be  
10 important that all of your answers be verbal as  
11 the young lady seated to your immediate left  
12 cannot take down shrugs of the shoulders or nods  
13 of the head.

14 If at any point you don't understand a  
15 question that I'm asking, let me know. Since you  
16 were sworn to tell the truth, we're going to  
17 assume that every answer you're giving is an  
18 accurate answer to the question. And if you  
19 didn't understand the question, well, it's going  
20 to be there anyway. So if you're not sure you  
21 understand it, let me know.

22 As you know, the gentleman seated to your  
23 immediate right is the attorney representing the  
24 City of Troy. Should you need clarification from

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1 him, you're welcome to confer with him, but not  
2 while there's a question pending. In the event  
3 that the attorney makes an objection, I'll ask  
4 you not to answer the question until he and I  
5 have clarified, and you'll either be given an  
6 instruction by him to answer or not to answer the  
7 question.

8 It may be rare, but there may be instances  
9 where you are instructed by the attorney not to  
10 answer the question, and it's important that you  
11 follow his instructions as well.

12 Do you understand these instructions that  
13 I've given you today?

14 A. Yes.

15 Q. Are you under the influence of anything that will  
16 prevent you from understanding the questions that  
17 I'm giving and answering those questions?

18 A. No.

19 Q. Have you consumed any prescription medications in  
20 the last 24 hours?

21 A. No.

22 Q. You ever been a plaintiff in a lawsuit?

23 A. Have I sued somebody?

24 Q. Yes. Have you ever sued anyone?

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1 A. No.

2 Q. Have you ever been sued in a lawsuit?

3 A. I believe yes.

4 Q. Okay. And what kind of lawsuit was that?

5 A. It was -- I believe it was something work-related  
6 through the City of Troy, performance of my duty.

7 Q. Would that have been performance of duty as a  
8 police officer?

9 A. Yes. I believe, as I recall, it was some time  
10 ago. It may have been some type of civil right  
11 violation.

12 Q. Okay. Do you remember what the allegations were  
13 against you from that lawsuit?

14 A. There were several officers involved, as I  
15 recall. I believe it had to do with detaining  
16 someone, but as I recall, it was dismissed.

17 Q. Okay. Did you -- obviously, withdrawn.

18 You know that you're here for a deposition.  
19 You've been instructed by your counsel as to  
20 that; correct?

21 A. Yes.

22 Q. Have you ever given a deposition before?

23 A. Yes.

24 Q. Did you give a deposition in that case?

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1 A. No.

2 Q. Approximately, how many times have you given  
3 depositions?

4 A. Twice.

5 Q. Were you a party in either of those lawsuits?

6 A. I was a witness.

7 Q. Okay. But you were not a plaintiff or a  
8 defendant in either of those cases?

9 A. No.

10 Q. Did those cases involve the City of Troy Police  
11 Department?

12 A. Yes.

13 Q. And you were testifying as far as things you  
14 observed?

15 A. Yes.

16 Q. You ever testify in court?

17 A. Yes.

18 Q. More than once, of course; right?

19 A. Yes.

20 Q. To the best of your recollection, have you  
21 testified more than ten times over the course of  
22 your career?

23 A. Yes.

24 Q. Before you came here today, did you review any

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1 documents in order to prepare for this  
2 deposition?

3 A. Yes.

4 Q. What did you review?

5 A. I reviewed my reports that I had filed in  
6 reference to the Edson Thevenin case.

7 Q. How many reports did you review?

8 A. Without directly looking at my reports, I  
9 couldn't give you an exact number. There's a  
10 couple of different pages. Some are reports.  
11 There was a deposition, the use of -- response to  
12 resistance report, incident report, couple of  
13 supplemental reports called TPD 120s. I believe  
14 that's about it, that I recall.

15 Q. So what we're going to do, right now, we're going  
16 to mark four reports that I was able to locate,  
17 and the materials that I was provided by counsel  
18 over the last couple of weeks. We're going to  
19 mark them, take a quick look at them, you'll let  
20 me know if there's anything else that I don't  
21 have, and then we'll continue with the  
22 deposition. Okay?

23 A. Okay.

24 (Plaintiffs' Montanino Exhibits 1 through

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1 4 were marked for identification.)

2 Q. I'm going to show you a document that's been  
3 marked Montanino 1. Please take a look at it,  
4 let me know when you're done.

5 This is a incident report; is that correct?

6 A. Yes, it is.

7 Q. Is this one of the documents you reviewed to  
8 prepare for the deposition today?

9 A. Yes, it is.

10 Q. Okay. Let's put that to the side, please.  
11 I'm showing a document that's been marked  
12 Montanino 2. It says "Deposition of a Witness."  
13 I believe you said that you had reviewed your  
14 deposition.

15 Is this the statement you referred to  
16 before?

17 A. Yes, it is.

18 Q. Let's put that on the stack as well. I'm showing  
19 a document that's been marked Montanino 3. It  
20 says "Supplemental Report" on the top.

21 Is this one of the documents that you had  
22 reviewed to prepare for the deposition?

23 A. Yes.

24 Q. And the fourth document that I have is the

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1 response to resistance report which is marked  
2 Montanino 4.

3 Is this a document that you reviewed in  
4 order to prepare for this deposition?

5 A. Yes.

6 Q. Are there any other documents that you reviewed  
7 in order to prepare for this deposition other  
8 than those four documents that you've just been  
9 shown?

10 A. No, other than general order policies.

11 Q. Meaning, general order policies for the Troy  
12 Police Department, like use-of-force,  
13 use-of-deadly physical force, things of that  
14 nature?

15 A. Yes.

16 Q. Which policies did you, in fact, review in order  
17 to prepare for the deposition?

18 A. Looked at the use-of-force policy, deadly  
19 physical force policy, traffic stop policy. I  
20 believe those were the --

21 Q. Okay. So as we continue with the deposition, if  
22 you recall at any point that there was something  
23 else that you reviewed in order to prepare,  
24 please let me know, and we can supplement your



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1 answer.

2 A. Okay.

3 Q. You're, obviously, sitting here in uniform,  
4 you're employed by the City of Troy Police  
5 Department.

6 When did you become employed for the first  
7 time by the City of Troy Police Department?

8 A. October 18th, 1993.

9 Q. Had you served in law enforcement prior to  
10 October 1993?

11 A. Yes.

12 Q. And where you employed prior to the City of Troy  
13 Police Department?

14 A. The Rensselaer County Sheriff's Department.

15 Q. And for what period of time were you employed by  
16 the Rensselaer County Sheriff's Department?

17 A. From August 5th of 1991 until October the 18th of  
18 1993.

19 Q. And prior to working for the Rensselaer County  
20 Sheriff's Department, did you work in law  
21 enforcement?

22 A. No.

23 Q. When you worked for the Rensselaer County  
24 Sheriff's Department, was that on the civil end

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1 or the criminal end, or do they not draw that  
2 distinction?

3 A. I was a road patrol deputy.

4 Q. So you weren't doing evictions or things of that  
5 nature?

6 A. No.

7 MR. TORCZYNER: Off the record for a second.

8 (An off-the-record discussion was held.)

9 BY MR. TORCZYNER:

10 Q. Did you have to take a civil service test before  
11 becoming employed by the Rensselaer County  
12 Sheriff's Department?

13 A. Yes.

14 Q. That was a New York State test or a county test  
15 or something else?

16 A. I believe, as I recall, a New York State civil  
17 service test administered by the county.

18 Q. Did you go through county or state training prior  
19 to becoming a member of the sheriff's department?

20 A. Yes.

21 Q. There's something called Zone 5. Are you  
22 familiar with that term?

23 A. Yes, I am.

24 Q. Did you go through Zone 5 in order to --

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1           withdrawn.

2                   Did you go through Zone 5 prior to becoming  
3           an active member of the sheriff's department?

4           A.    Yes.

5           Q.    And what kind of training did you undergo, at  
6           that point, for Zone 5, to the best that you  
7           recall?

8           A.    Basic police officer training involving all  
9           aspects of police work: use-of-force, we went  
10          through vehicle traffic law, emergency vehicle  
11          operation, use of your weapon, gun training,  
12          Vehicle and Traffic Law, Penal Law, Criminal  
13          Procedure Law, some first aid, some mental health  
14          class, and radar operation, breathalyzer  
15          operation. And I'm sure there was other classes  
16          that I just don't recall the exact names of right  
17          now.

18          Q.    OC?

19          A.    I did not have OC when I originally went to the  
20          academy.

21          Q.    Okay. That was something that came later, or  
22          they just didn't issue that at the sheriff's  
23          department, or something?

24          A.    That was, I believe, as I recall, something that

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1 came later on.

2 Q. What titles did you hold with the sheriff's  
3 department?

4 A. Just a deputy sheriff.

5 Q. And why did you leave the sheriff's department  
6 for the City of Troy Police Department?

7 A. City of Troy, more opportunity, higher pay scale.  
8 Having lived in the city, wanted to be -- serve  
9 the city.

10 Q. Did you have to take a test in order to become  
11 employed by the City of Troy Police Department?

12 A. I took a civil service test for the police  
13 department, but I was hired as a lateral  
14 transfer.

15 Q. So this was a separate civil service test than  
16 the initial one that you took in order to become  
17 employed by the county?

18 A. Yes.

19 Q. And when you were hired as a lateral, to use that  
20 term, what was your official title when you first  
21 became employed by the City of Troy?

22 A. Police officer.

23 Q. Currently, how many police stations does the City  
24 of Troy have?

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1 A. There is one station.

2 Q. Then there are subunits, or is it everything  
3 through the same one station?

4 A. At one time we had two substations: One in the  
5 south end of the city, and one in the north end  
6 of the city. They've since been closed, and we  
7 operate out of one building.

8 Q. And what is the address of that building?

9 A. 55 State Street, Troy, New York.

10 Q. That's the same address that you gave as the  
11 official address for business for yourself;  
12 correct?

13 A. Yes.

14 Q. For what period of time did you hold the rank of  
15 police officer?

16 A. From October 18th of '93 to June of 2005.

17 Q. And what rank did you attain in June of 2005?

18 A. The rank of sergeant.

19 Q. For what period of time did you hold the rank of  
20 sergeant?

21 A. Until -- I'm sorry. I'm going to backup. It was  
22 July of 2005, and then from -- in June of 2014 I  
23 was promoted to the rank of captain.

24 Q. And that's the current rank that you hold;

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1 correct?

2 A. Yes.

3 Q. What are your duties and responsibilities as the  
4 captain in the Troy Police Department?

5 A. I oversee the midnight shift. I review reports,  
6 do scheduling, payroll issues, administrative  
7 duties, reports, reporting to the chief,  
8 assignment of jobs to officers on nightly basis,  
9 as well as out on patrol at times myself.

10 Q. Since you were promoted to captain in June 2014  
11 have you ever supervised any other shift other  
12 than the midnight shift?

13 A. No.

14 Q. I know that depending on the police department  
15 that I represent, they have different definitions  
16 of what the overnight shift is; is yours a 12 to  
17 8, 8 to 4, 4 to 12?

18 A. No.

19 Q. How do the shifts work in the Troy Police  
20 Department?

21 A. I -- my hours myself are 11 p.m. to 7 a.m. But my  
22 shift runs from 11:30 p.m. to 7:30 a.m. with  
23 another set of guys that come in from midnight  
24 until 8 a.m.

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1 Q. You're shift is 11:30 to 7:30, but the officers,  
2 themselves, come on board at midnight; is that  
3 correct?

4 A. I, myself, start at 11 p.m., and then at 11:30  
5 there's a first group of officers that come in at  
6 11:30; they work 11:30 to 7:30. Then at midnight  
7 there's another set of officers that come in, and  
8 they work from midnight until 8 a.m. Kind of,  
9 just staggering the shifts to cover when the  
10 other early guys leave to have coverage for the  
11 city while shifts are changing.

12 Q. Okay. The 11:30 to 7:30 shift, is that given a  
13 letter or a code or a term?

14 A. No.

15 Q. Okay. So if an officer gets a duty posting and  
16 they tell them that you're going from 11:30 to  
17 7:30, what's the name of that shift?

18 A. Some places use A-line for a midnight tour.

19 Q. I'm wondering what the Troy Police Department  
20 uses.

21 A. We use just the midnight shift.

22 Q. Okay. So you can be on the midnight and start at  
23 11:30, or you can be on the midnight shift and  
24 start at 12; there's no distinction?

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1 A. No.

2 Q. And that's always been that way since you started  
3 with them in June of '14, as the captain for the  
4 midnight shift?

5 A. Yes.

6 Q. So many of the police departments that I've  
7 worked and with, they have a series of certain  
8 number of days on, and a certain number of days  
9 off.

10 Does the Troy Police Department have that system  
11 as well?

12 A. They have a -- it's a cycle. That's how the days  
13 off work.

14 Q. So it's like a four on, three off, something like  
15 that?

16 A. Sometimes it can be. If I can explain?

17 Q. By all means.

18 A. You would have -- if you had the weekend off,  
19 Saturday, Sunday, if you're in a squad, which the  
20 patrolman are in squads, there's three separate  
21 squads on a shift. If you had Saturday, Sunday  
22 off, you would come back, work Monday, Tuesday,  
23 Wednesday, and you would have Thursday off. And  
24 then you would come back in work Friday,



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1 Saturday, Sunday, Monday, have Tuesday and  
2 Wednesday off. Then come back and work Thursday,  
3 Friday, Saturday, Sunday, have Monday off, and  
4 then you would have the weekend. And it goes in  
5 that rotation. And then you would have Thursday  
6 off, then Tuesday, Saturday, then Monday, then  
7 Saturday, Sunday.

8 Q. Okay. And when you're talking about a day, when  
9 you say, for instance, Sunday, Sunday would mean  
10 starting at 11:30 Saturday night or 12:00 a.m.  
11 Sunday morning, depending on what part of this  
12 shift you're in; correct?

13 A. That's correct.

14 Q. Do officers have as their first day of their  
15 shift that Sunday, either 11:30 Saturday night  
16 into Sunday morning or 12 Sunday, or is that  
17 always in the middle of a shift? Do you  
18 understand the question I'm asking?

19 A. No, I don't. I'm sorry.

20 Q. Okay. So an officer comes on board at 11:30  
21 Saturday night, or 12 midnight into Sunday  
22 morning, depending on which part of the shift  
23 he's in, is that ever first on a day where  
24 someone was coming off break, or is that always

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1 in the middle of a cycle? Do you understand the  
2 question?

3 MR. ASPLAND: Note my objection to the form.

4 A. Somebody could be off on a vacation, which would  
5 run from Sunday to Saturday, and then Saturday  
6 night come in at 11:30 where they'd be actually  
7 technically working for Sunday. If that's --

8 Q. Got it. You've now answered my question. Thank  
9 you.

10 Okay. You said there are three squads on a  
11 shift. What are those three squads?

12 A. They go by numbers: Squad 1, Squad 2, and Squad  
13 3.

14 Q. Okay. Are those based on sectors of the city, or  
15 something else?

16 A. Yes, they have, generally speaking, Squad 1  
17 officers would be the city divided into four  
18 zones. Generally speaking, the Squad 1 officers  
19 would cover the Zone 1 and 2 areas as well as  
20 they would have some extra officers in there. So  
21 their assignment could be different each night to  
22 fill in wherever there was a vacancy.

23 Squad 2, officers would generally cover  
24 Zones 3 and 4. Again, having officers that are

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1 extra who could be placed wherever through the  
2 city with filling in a vacancy.

3 Squad 3 is considered a relief squad, where  
4 when Squad 1 is off, they're filling in their  
5 zone. And when Squad 2's off, they're filling in  
6 their zone. And one night a week, generally on  
7 Friday, is the day that they would be considered  
8 extra officers, and they would be given bidding  
9 assignments for whatever we had going on.

10 Q. These squads, the 1, 2, and 3, are they the only  
11 squads that exist in the Troy Police Department,  
12 or are there other squads, like detective or  
13 crimes against property, or things of that  
14 nature?

15 A. There are other divisions within the police  
16 department.

17 Q. Okay. What are the other divisions in the police  
18 department?

19 A. We have a detective division, we have a traffic  
20 division, a community police division.

21 Q. Is that a school resource, or something else?

22 A. School resource officers do fall under that  
23 division.

24 Q. Okay.

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1 A. And we have a FINS unit, which is a firearms and  
2 narcotic suppression type of unit.

3 Q. Is that within the detective squad, or that's  
4 something else?

5 A. The officers that are in there are detectives,  
6 but they're within the detective bureau  
7 investigating, like, criminal mischief complaints  
8 or, you know, assaults or something like that.  
9 They're --

10 Q. Specialized?

11 A. -- specialized for drugs and guns, something like  
12 that.

13 Q. When you're acting as captain on the midnight  
14 shift, are you supervising all of these  
15 divisions, or just Squad 1, 2, and 3?

16 A. Just Squad 1, 2, and 3.

17 Q. And within the chain of command, is there an  
18 officer that's senior to you who's actually on  
19 duty at 55 State Street during the midnight  
20 shift?

21 A. No, I'm the most senior officer on duty on the  
22 midnight shift.

23 Q. And there are other shifts besides the midnight  
24 shift at this police department; correct?

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1 A. Yes.

2 Q. The other shifts are, approximately, from 7, 7:30  
3 in the morning until about 3:30, 4:00 in the  
4 afternoon, and then from there until 11; is that  
5 the way that it works?

6 A. It will be 7:30 in the morning until 3:30 in the  
7 afternoon, or 8 in the morning until 4 in the  
8 afternoon, and then 3:30 in the afternoon until  
9 11:30 at night, or 4 in the afternoon until  
10 midnight.

11 Q. During either of those other shifts, is there  
12 ever anyone on duty that's more senior than a  
13 captain?

14 A. During the daytime shift, that's when the chiefs  
15 are around. So I would say that if the -- if the  
16 chiefs are there and the captain's there,  
17 obviously, there would be somebody more senior to  
18 the captain.

19 Q. Okay. And that's both during the 7:30 or 8 to  
20 3:30, 4, and the 3:30, slash, 4 to 11, 11:30? Do  
21 you understand the question I'm asking?

22 A. You're asking if the chiefs are also on the  
23 afternoon shift?

24 Q. Yes.

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1 A. To the best of my knowledge, they generally work  
2 days, but, I believe, at their discretion they  
3 could flex themselves and come in and work an  
4 afternoon shift, or even a nightshift if so  
5 desired.

6 Q. Who was the chief in April 2016?

7 A. Chief John Tedesco.

8 Q. Is he still the chief?

9 A. Yes.

10 Q. And you had mentioned something about assistant  
11 chiefs or deputy chiefs, am I correct?

12 A. We have a deputy chief, and his name is Richard  
13 McAvoy. And we have an assistant chief, whose  
14 name is George VanBramer, and he's actually in  
15 charge of the patrol division.

16 Q. Can you give the spelling, please, on George's  
17 last name?

18 A. V-A-N, capital B, R-A-M-E-R.

19 Q. VanBramer. Okay. I just wanted to make sure  
20 that I was pronouncing it correctly, not that  
21 he's in the room.

22 So within the chain of commands, who do you  
23 report to?

24 A. I report to Assistant Chief VanBramer.

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1 Q. And Assistant Chief VanBramer reports to Richard  
2 McAvoy, to your knowledge?

3 A. I believe that he reports to Chief Tedesco, to  
4 the best of my knowledge.

5 Q. So who does Richard McAvoy supervise, to your  
6 knowledge?

7 A. He supervises the detective division.

8 Q. And all three of these individuals: Chief  
9 Tedesco and Deputy Chief McAvoy, and Assistant  
10 Chief VanBramer, they were all employed in those  
11 positions by the City of Troy in April 2016?

12 A. Yes.

13 Q. Are they all still currently employed by the City  
14 of Troy?

15 A. Yes.

16 Q. Has your title changed at all since 2014 when you  
17 became captain?

18 A. No.

19 Q. Have your duties and responsibilities changed  
20 since you became captain in June of 2014?

21 A. No.

22 Q. Did you have to go through special training in  
23 order to become captain?

24 A. No.

MATTHEW MONTANINO - 07/27/17

1 Q. You had mentioned that you had training, at some  
2 point, after Zone 5 in the use of OC; do you  
3 recall giving that answer?

4 A. Yes.

5 Q. Is there a periodic in-service training that's  
6 given to officers and patrolmen of the Troy  
7 Police Department?

8 A. Yes.

9 Q. About how many days a year, ballpark, do you go  
10 for training?

11 A. They have a in-service training, roughly,  
12 40 hours, and then they have a firearms refresher  
13 recertification twice a year.

14 Q. The firearms certification, is that done by an  
15 outside agency, or that's with the Troy Police  
16 Department?

17 A. That's with the Troy Police Department.

18 Q. Is there a technical sergeant that's in charge of  
19 that? I don't know what the term is they use; I  
20 know the state troopers have a technical  
21 sergeant.

22 A. There's a few sergeants and a few patrolmen that  
23 are firearms instructors, and they conduct the  
24 firearm training.



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1 Q. And you, yourself, previous were an instructor in  
2 firearms?

3 A. No, I was not.

4 Q. As part of your duties as captain, do you have to  
5 do a review of the officers under your command  
6 and report based on those reviews?

7 A. We do a yearly evaluation process.

8 Q. That's something you, as captain, perform, or is  
9 that someone that's senior to you that does that  
10 evaluation?

11 A. I do the evaluations for the sergeants that are  
12 under my command. The sergeants do evaluations  
13 on the patrolmen that are under their  
14 supervision, which would be the officers and  
15 their squad. And then I would review those  
16 ratings or the reviews, and then do the sergeant  
17 ones, and then I would forward those to  
18 Chief VanBramer.

19 Q. Is there a particular name for the evaluation  
20 form; like you had mentioned the TPD 120, is  
21 there a particular number or name for this  
22 evaluation form?

23 A. The appraisal form bears the name, and I just  
24 can't recall off the top of my head.

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1 Q. Okay. For the purposes of our conversation, if I  
2 say, Appraisal Form, we'll be talking about this  
3 evaluation that's done of the sergeants that are  
4 in your command; can we have that understanding?

5 A. Yes.

6 Q. You're familiar with Sergeant French?

7 A. Yes.

8 Q. Okay. Do you refer to him as Sergeant French, or  
9 do you refer to him by a first name; how do you  
10 generally refer to him?

11 A. I, generally, refer to him on a personal basis as  
12 Randy, and other circumstances out in the field,  
13 or in other officers' presence something more  
14 official, I'd call him Sergeant French.

15 Q. So if I were to refer to him as Sergeant French  
16 or interchangeably Randy, you'd know who I was  
17 talking about; correct?

18 A. Yes.

19 Q. Did you do evaluations for Sergeant French after  
20 you became captain in 2014?

21 A. Yes.

22 MR. TORCZYNER: I'm going to ask for  
23 production of the evaluations. I'll follow it up  
24 in writing. Although, we did receive a

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1 significant volume of discovery, I don't believe  
2 that that came. I don't know if that was because  
3 those were in personal records that were not  
4 ordered turned over, or they were not in the  
5 personnel file that were provided to the judge for  
6 review. In any event, I'll follow it up in  
7 writing.

8 MR. ASPLAND: I'll take it under advisement,  
9 and look through what we provided and the term,  
10 what we have and what's given and so forth.

11 MR. TORCZYNER: If you can let me know, at  
12 some point, the next couple of days that this was  
13 something that was provided to the judge for  
14 review, then that would, obviously, take care of  
15 the need for the production. If the judge looked  
16 at it and said, You don't need it, then that's why  
17 we don't have it. But, at this point, we don't  
18 have it.

19 MR. ASPLAND: Okay.

20 MR. TORCZYNER: Thank you.

21 MR. ASPLAND: And you're, specifically,  
22 referring to the appraisal form that we're  
23 discussing here; right?

24 MR. TORCZYNER: Correct. I don't know --

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1           again, we haven't established the specific title  
2           of it, but based upon the witness's statement, I  
3           think you can probably identify it.

4           MR. ASPLAND: Yep.

5           DOCUMENT/INFORMATION REQUESTED:

6           Q.    Do you ever do you appraisals of officers, or  
7           evaluations of officers? And I use that term,  
8           "officers," loosely, basically, anyone in your  
9           command. Do you ever do those after an incident  
10          takes place?

11          A.   No.

12          Q.   If I use the term "officer-involved shooting,"  
13          you'd know what I mean; right?

14          A.   Yes.

15          Q.   After an officer-involved shooting, is there a  
16          standard operating procedure in the Troy Police  
17          Department to do an investigation of that  
18          shooting?

19          A.   Yes.

20          Q.   And is there an individual in the Troy Police  
21          Department who's tasked with doing that  
22          investigation? I'm just talking on a general  
23          basis, not specific to what happened to Sergeant  
24          French?

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1 A. No, that would come through the Detective Bureau,  
2 through Chief McAvoy, I believe. I don't know  
3 who they would, specifically, assign to that.

4 Q. Okay. Have you, yourself, ever done any of these  
5 investigations of officer-involved shootings?

6 A. No.

7 Q. You never passed through the Detective Division;  
8 correct?

9 A. I did a brief time in the Detective Division.

10 Q. When were you in the Detective Division?

11 A. I believe it was the latter part of 2008, early  
12 part of 2009.

13 Q. So this was when you were a sergeant?

14 A. Yes.

15 Q. Is there a term in the Troy Police Department,  
16 detective sergeant, or do detectives actually  
17 hold the rank of sergeant, they're just not  
18 called it?

19 A. There's a detective sergeant, in there are  
20 patrolmen that are in there as well.

21 Q. Were you ever detective sergeant?

22 A. Yes.

23 Q. And that was the pass-through time we were  
24 speaking of?

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1 A. That was, again, I believe it was the latter part  
2 of 2008, early part of 2009.

3 Q. At that point, who was doing the officer-involved  
4 shooting investigations, to your recollection?

5 A. I don't recall, at that point in time, there  
6 having been one, an officer-involved shooting.  
7 So I don't know who would have been doing that  
8 investigation if there had been one.

9 Q. During that time, were there any fatalities that  
10 may have been attributed to officers even if it  
11 didn't involve a shooting?

12 A. Without looking at any kind of paperwork, I don't  
13 recall that.

14 Q. I'm not asking you to look at it. It's really  
15 based on your recollection.

16 Do you know whether the officer-involved  
17 shooting involving Sergeant French was  
18 investigated by the Troy Police Department?

19 A. Yes.

20 Q. Do you know who conducted that investigation?

21 A. I know that there was numerous detectives that  
22 were assigned different assignments. As for what  
23 their exact assignments were, I do not know. I  
24 did speak with the detective in reference to the

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1 incident that I had given a deposition to.

2 Q. Okay. And which detective did you speak with?

3 A. Detective Sergeant White and, I believe,  
4 Detective Sergeant Bornt also was with him.

5 Q. Okay. Do you know the first names for Detective  
6 Sergeant White and Bornt? Let's start with  
7 Detective Sergeant White, do you know his first  
8 name?

9 A. Raymond.

10 Q. Do you know whether he's still employed by the  
11 Troy Police Department?

12 A. Yes, he is.

13 Q. And Detective Sergeant Bornt, can you spell that  
14 last name, please?

15 A. B-O-R-N-T.

16 Q. And what's his first name?

17 A. Patrick.

18 Q. And is Patrick Bornt still employed by the Troy  
19 Police Department?

20 A. Yes.

21 Q. Are you familiar with a Detective or Detective  
22 Sergeant Smith that's employed by the Troy Police  
23 Department?

24 A. Detective Sergeant Smith? No.

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1 Q. Just give me a moment. Could be my recollection.  
2 Okay. It's my recollection, it was  
3 Sergeant White, Detective Sergeant White, not  
4 Detective Sergeant Smith?

5 Do you know whether the Troy Police  
6 Department made a finding as far as  
7 Sergeant Randy --

8 MR. TORCZYNER: Off the record.

9 (An off-the-record discussion was held.)

10 BY MR. TORCZYNER:

11 Q. -- Sergeant Randy French's involvement in the  
12 shooting?

13 MR. ASPLAND: Did they make a filing?

14 MR. TORCZYNER: As far as his involvement in  
15 the shooting. Was he suspended?

16 MR. ASPLAND: Okay.

17 MR. TORCZYNER: Was he disciplined?

18 A. I'm sorry, the question again?

19 Q. To your knowledge, did the Troy Police Department  
20 make a finding as far as Randy French's conduct  
21 in the shooting?

22 A. I have not been told a direct answer to that.

23 Q. When you say you haven't been told, you're  
24 talking through officials channels; correct?



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- 1 A. Yes.
- 2 Q. Okay. Did you hear from someone in the station
- 3 house that they made a finding?
- 4 A. No.
- 5 Q. After the shooting, Randy French was on leave for
- 6 a while because of medical; correct?
- 7 A. I know that's he's been on leave or out of work.
- 8 I do not know the circumstances pertaining to
- 9 that.
- 10 Q. Has Sergeant French returned to duty as of today?
- 11 A. No.
- 12 Q. Have you been told the reason why Sergeant French
- 13 has not returned to duty?
- 14 A. No.
- 15 Q. Other than Detective Sergeant White and Detective
- 16 Sergeant Bornt, have you spoken with any other,
- 17 I'll use the term "officer" loosely, but you'll
- 18 know what I mean, who were employed by Troy
- 19 Police Department who investigated the
- 20 officer-involved shooting?
- 21 A. I spoke with, like, Captain Sprague briefly, but
- 22 nothing, like -- I did not give him a statement
- 23 or anything like that. Just, you know, talked to
- 24 him, like, the date of the incident.

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1 Q. Is Captain Sprague still employed by Troy?

2 A. Yes.

3 Q. What's his first name?

4 A. Richard.

5 Q. And this wasn't an investigation, this was just  
6 someone who you spoke with about the incident?

7 A. Yes, this was just after the incident had taken  
8 place.

9 Q. When you're on duty as the captain, is there  
10 another captain that is on duty at the same time  
11 as you, or is it just you?

12 A. It's just me.

13 Q. Captain Sprague was the next tour after you that  
14 day, or you just happened to have spoken with  
15 him?

16 A. Captain Sprague is in charge of the Detective  
17 Bureau.

18 Q. So he's underneath Chief McAvoy?

19 A. Yes.

20 Q. Okay. When was the first time that you spoke  
21 with Detective Sergeant White about the incident?

22 A. The morning of the incident.

23 Q. Okay. So the incident took place, approximately,  
24 3:00 in the morning on April 17th, 2016?

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1 A. Approximately.

2 Q. So when you say "the morning," at some point  
3 later after 3 a.m. on that date is when you spoke  
4 with him?

5 A. Yes.

6 Q. Was it more than one conversation?

7 A. It was a conversation in the office where I gave  
8 a deposition to him.

9 Q. Okay. When say you gave a deposition, is that  
10 one of the documents that's been marked?

11 A. Yes, it is.

12 Q. Can you please identify that document.

13 A. Yes, it's marked with a yellow sticker. It has  
14 my name, Montanino 2, on it.

15 Q. Was that statement taken that morning of  
16 April 2016?

17 A. Yes, it was.

18 Q. And it indicates time, 9:15 a.m.?

19 A. That's correct.

20 Q. And that's, approximately, the time, that's the  
21 conversation you were referring to?

22 A. Yes.

23 Q. Let's put that back on the stack, please.

24 Other than that deposition, which we'll get

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1 back to later, did you have any other  
2 conversations with Detective Sergeant White in  
3 relation to the officer-involved shooting  
4 involving Randy French?

5 A. I believe I may have had an informal conversation  
6 with him the night I had returned from being off  
7 after the incident about completing some  
8 paperwork.

9 Q. Were you on medical leave after the incident?

10 A. No.

11 Q. Were you on any administrative leave after the  
12 incident?

13 A. I was on one administrative day and a day off.

14 Q. So after those days off, that's when you had that  
15 conversation with Detective Sergeant White?

16 A. Yes.

17 Q. When did you first talk to Detective Sergeant  
18 Bornt about the incident?

19 A. I believe he was with Sergeant White when I gave  
20 the deposition.

21 Q. Did you ever have conversation with Detective  
22 Sergeant Bornt other than that being present  
23 during the deposition that was marked as  
24 Exhibit 2?

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1 A. He may have been present when I had talked to  
2 Sergeant White, again, after my return, about the  
3 completing some paperwork.

4 Q. So other than these conversations that took place  
5 the morning of the incident and, approximately,  
6 two days later, you haven't spoken with anyone  
7 investigating this by the Troy Police Department  
8 since that point?

9 A. That's correct.

10 Q. Okay. Did you ever speak with anyone from the  
11 district attorney's office about the  
12 officer-involved shooting?

13 A. Yes.

14 Q. Who did you speak to from the district attorney's  
15 office?

16 A. That was the district attorney, Joel Abelove.

17 Q. That's the way you pronounce it, Abelove?

18 A. Yes.

19 Q. When did you first speak with the district  
20 attorney about the incident?

21 A. It was within the week of the incident. I don't  
22 recall which day, specifically.

23 Q. Did you testify before the grand jury in this  
24 case?

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1 A. Yes.

2 Q. Do you know the date that you testified before  
3 the grand jury?

4 A. I don't recall the exact date. I believe that it  
5 was on a Friday, but I don't recall the date.

6 Q. This incident, April 17th of 2016, do you know  
7 what calendar day that was?

8 A. It was a Sunday.

9 Q. Okay. So, approximately, four or five days later  
10 is when you went before the grand jury to  
11 testify?

12 A. Yes.

13 Q. Who presented the case to the grand jury? Do you  
14 know what I mean when I say that?

15 A. Yes.

16 Q. Okay.

17 A. The district attorney, Ablove.

18 Q. So he did this himself. There was not a line  
19 district attorney that did it, it was the  
20 district attorney who presented it; correct?

21 A. While I was testified, he was the one that was  
22 there.

23 Q. Okay. Were you questioned by members of the  
24 grand jury?

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1 A. As I recall, I believe there were some questions  
2 from members of the grand jury.

3 MR. TORCZYNER: So let's go off for a minute.

4 (An off-the-record discussion was held.)

5 BY MR. TORCZYNER:

6 Q. So we were discussing the grand jury and you had  
7 mentioned that you did receive some questions  
8 from panel members of the grand jury; do you  
9 recall giving that answer?

10 A. Yes.

11 Q. Do you recall how long you testified for?

12 A. I do not.

13 Q. Were you present when anyone else testified at  
14 the grand jury?

15 A. I'm not sure I understand the question.

16 Q. Were you in the grand jury room when someone else  
17 testified?

18 A. No.

19 Q. Did you speak with anyone from the district  
20 attorney's office about the officer-involved  
21 shooting after you testified before the grand  
22 jury?

23 A. No.

24 Q. Have you spoken with District Attorney Ablove,

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1 at any point, in relation to Sergeant French or  
2 Edson Thevenin subsequent to April of 2016?

3 A. No.

4 Q. Did you ever speak to the FBI about the  
5 officer-involved shooting?

6 A. No.

7 Q. Are you aware whether the FBI has spoken with  
8 anyone at the Troy Police Department about the  
9 officer-involved shooting?

10 A. I am not aware of that.

11 Q. Are you familiar with a man named  
12 Eric Schneiderman?

13 A. Yes.

14 Q. He's the attorney general for the State of New  
15 York; correct?

16 A. Yes.

17 Q. Have you met Eric Schneiderman?

18 A. No.

19 Q. Have you ever spoken with anyone from the  
20 attorney general's office in connection with the  
21 officer-involved shooting?

22 A. Yes.

23 Q. And when did you first speak with someone from  
24 the attorney general's office about the



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1 officer-involved shooting?

2 A. A few weeks ago.

3 Q. Okay. Were you instructed, at that point --  
4 withdrawn.

5 Who did you speak with from the attorney  
6 general's office?

7 A. A secretary.

8 Q. Was this by phone?

9 A. Yes.

10 Q. What was the conversation?

11 A. She had asked me to come into the office, that  
12 investigators would like to talk to me.

13 Q. Has a meeting date been set?

14 A. It had been.

15 Q. Okay. You used that term in past tense, what do  
16 mean by "had been"?

17 A. A date was set up, and I had consulted with my  
18 union representative, and I had called back the  
19 secretary, don't recall her name, and left a  
20 message that I would not be coming in to speak  
21 with them without a subpoena. And an attorney  
22 from the office had sent me an email about  
23 looking forward for me coming in. I think it was  
24 a cross communication there, at which time, I had

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1 sent an email back that I would not be coming in.

2 Q. This representative from the union, is that  
3 person a lawyer?

4 A. No, that was my union rep.

5 Q. I don't know if your union rep is a lawyer,  
6 that's why I'm asking.

7 A. Okay.

8 Q. So the union rep is not a lawyer?

9 A. No.

10 Q. What did your union rep advise you about speaking  
11 to the attorney general's office?

12 A. They said that if they wanted to talk to you,  
13 that they were going to have to issue a subpoena?

14 Q. Did you ask him why he said that?

15 A. No.

16 Q. Did you ask him why they would need a subpoena to  
17 talk to you?

18 A. No.

19 Q. Have you ever -- withdrawn.

20 Have you ever been advised that you were a  
21 target of an investigation?

22 A. No.

23 Q. And other than this interplay with the attorney  
24 general's office that was the invitation and then

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1 the cancellation of the invitation, have you ever  
2 spoken with anyone substantively at the AG's  
3 office about the officer-involved shooting?

4 A. No.

5 Q. Who's the mayor of Troy?

6 A. Mayor Patrick Madden.

7 Q. Was he also the mayor back in April of 2016?

8 A. Yes.

9 Q. Did you ever talk to Mayor Madden about the  
10 officer-involved shooting?

11 A. No.

12 Q. You ever speak with anyone from the mayor's  
13 office; and I don't mean people who report to the  
14 mayor, like the chief, but have you ever spoken  
15 with anyone from the mayor's office about the  
16 officer-involved shooting?

17 A. No.

18 Q. So we've talked about Detective Sergeant White  
19 and Detective Sergeant Bornt. Is there anyone  
20 else that you spoke with and you gave a  
21 description or narrative of the events that took  
22 place on April 17th, 2016, other than, obviously,  
23 counsel, who's seated next to you?

24 A. Not that I recall.

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1 Q. I'm going to refer to April 17th, 2016, date, as  
2 Sunday, with the understanding that you actually  
3 started Saturday night.

4 Are you comfortable with that description?

5 A. Yes.

6 Q. What time did you start that Sunday shift?

7 A. 11 p.m.

8 Q. Do you have a recollection of starting at  
9 11 p.m.?

10 A. That's the time that I come in. That's the time  
11 I'm required to be there, so yes.

12 Q. And that shift was called the midnight shift;  
13 correct?

14 A. Yes.

15 Q. Does the midnight shift generally have a roll  
16 call?

17 A. Yes, it does.

18 Q. Did you perform the roll call that night?

19 A. To the best of my recollection, no, I did not.

20 Q. Was there a roll call that night?

21 A. Yes.

22 Q. Do you, generally, as captain, perform the roll  
23 call for midnight shifts?

24 A. No.

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1 Q. Is there someone that you delegate that task to?

2 A. Yes.

3 Q. Who do you, generally, delegate that task to?

4 A. That would be the patrol sergeant that is working  
5 that night.

6 Q. Who was the patrol sergeant that was working that  
7 Sunday?

8 A. That was Sergeant French.

9 Q. My involvement with police departments shows that  
10 this task will vary from department to  
11 department, so I'm going to ask you some general  
12 questions just to get an understanding of how  
13 Troy operates.

14 Are there bulletins that are handed out  
15 during roll calls?

16 A. Yes.

17 Q. And those are things that people should be aware  
18 of, people, perhaps, to be aware of or areas that  
19 they want concentrations on, like, DWI, speeding,  
20 things of that nature?

21 A. Yes.

22 Q. Who prepares the bulletins that are handed out  
23 during roll call?

24 A. It varies. Officers, patrolmen, who receive

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1 information about certain subjects. Somebody  
2 wanted on a warrant may be coming from an outside  
3 agency looking for someone to ask us to keep an  
4 eye out or go check a location for someone from  
5 sergeants or captains or chief, depending on, you  
6 know, what the issue is. If it's a concentration  
7 in a certain area, if there's, you know, a drug  
8 dealing going on in a certain area, they, you  
9 know, ask for concentration here.

10 There could be -- somebody could call in and  
11 say they're going on vacation and ask us to, you  
12 know, keep an eye on their, you know, property,  
13 make checks. Those types of, you know, things  
14 would be on the roll call board.

15 Q. Do you know whether as a standard operating  
16 procedure the bulletins or announcements that are  
17 made at roll call, are they generally saved?

18 A. Not everything that goes on the clipboard, to the  
19 best of my recollection, is saved.

20 Q. Do you know, as we sit here today, what was  
21 announced at roll call on April 17th, 2016? By  
22 that, I mean, that midnight shift for Sunday.

23 A. I don't recall.

24 Q. Do you know whether -- if there were --

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1           withdrawn.

2                   When those announcements or bulletins are  
3           saved, is there a particular file or folder that  
4           they're saved in?

5       A.   Generally speaking, an officer -- when it would  
6           be saved, it would be like an officer safety  
7           bulletin, and that would be, generally, placed in  
8           a binder and kept at the police desk.

9       Q.   What do you mean by an "officer safety"?

10      A.   "Officer safety," would be something maybe along  
11           the lines of a certain person received  
12           information that a certain person may be carrying  
13           a weapon, may be driving a certain car, to keep  
14           an eye out, but it wouldn't -- would indicate  
15           that, you know, there's no probable cause to stop  
16           the person, at this time. But be aware that if  
17           you do come in contact with this person, that it  
18           is possible that they may have a weapon.

19      Q.   So if you received the bulletin that was not  
20           specific to officer safety like, for example, you  
21           might receive a bulletin that is spring break  
22           week, and expect that the college is going to be  
23           a little raucous? Would that be saved somewhere?

24      A.   I would say no.

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1 Q. So when these bulletins or announcements get  
2 handed in from various sources, is there a final  
3 person who determines what will or will not be  
4 given to the sergeant to use at roll call?

5 A. No. They're generally placed on the clipboard.  
6 The sergeant goes into the room with a clipboard,  
7 and he has the nightly-duty sheet on there  
8 indicating where the officers are assigned. And  
9 I had mentioned to you before that there's  
10 officers that are considered extras that are in  
11 the squad, and they would fill an open position  
12 somewhere. So they would bid, and he would fill  
13 their names in on that duty sheet and anything  
14 else that's subsequently, you know, on the roll  
15 call board, he would read off, and that's where  
16 they would remain. And then, at times, one of  
17 the patrol sergeants would generally clean off  
18 the board after something may have expired.

19 Q. So it's like a dry erase board?

20 A. No, it's just a regular clipboard, metal clip on  
21 the top, like an 8-by-11 board. And you just put  
22 copies of paper on there with, you know, the  
23 information.

24 Q. Do you know with certainty whether Sergeant



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1 French did perform a roll call for that Sunday  
2 tour?

3 A. I don't recall if I was in the lineup room that  
4 night with him. I, generally, do go into lineup.  
5 Not every night, but he was the patrol sergeant  
6 that night. And that was his responsibility to  
7 conduct the roll call at that particular time,  
8 11:30.

9 And if there were officers coming in at  
10 midnight for the rest of the shift, then he would  
11 also meet with them and conduct the same roll  
12 call, train -- or the same roll call that he  
13 conducted with officers at 11:30, because he was  
14 the only sergeant that was on that night.

15 Q. And I know this is, approximately, 18 months  
16 later, but do you recall any of the bulletins  
17 that were supposed to have been read for that  
18 Sunday midnight tour?

19 A. No, I do not.

20 Q. Now, you -- we're skipping forward in the story,  
21 of course, we'll get back to it. But you  
22 actually wound up at the scene of the  
23 officer-involved shooting; correct?

24 A. Yes.

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1 Q. Were you in a patrol vehicle that night?

2 A. I was in an unmarked Troy police car.

3 Q. On most nights that you're on duty do you go out  
4 in the unmarked patrol vehicle?

5 A. Yes.

6 Q. So your job as captain isn't a desk job, so to  
7 speak, it's more of an active patrol job; is that  
8 correct?

9 A. I say it's a combination of administrative as  
10 well as, you know, going out and taking a ride  
11 around and seeing what's going on and, you know,  
12 coming across things, checking on things,  
13 checking on officers, just to see what's going on  
14 out there, if I need to redirect people to  
15 certain areas because I observed something, or  
16 trying to verify information I may have received  
17 about complaints from citizen about certain  
18 activity in certain areas.

19 Q. Does the Troy Police Department have, what in  
20 other police departments they call a desk  
21 sergeant, someone who's on duty and supervising  
22 at the desk when people come into the police  
23 station?

24 A. Yes.

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1 Q. For that midnight tour who, generally, has that  
2 role?

3 A. There is someone that is assigned. Their bid  
4 position is the desk sergeant, and then when they  
5 are off, depending on seniority, the other road  
6 patrol sergeant that would be in, would fill that  
7 spot.

8 Q. Do you know who was the desk sergeant for the  
9 Sunday midnight tour?

10 A. Without looking at the duty sheet, offhand, which  
11 I have not seen since that night, I'm not a  
12 hundred percent sure. I believe it was Sergeant  
13 McNall, but I'm not a hundred percent on that.

14 MR. TORCZYNER: Well, I'm glad you brought it  
15 up, because we're going to make a request for the  
16 duty sheet for that night. In the event that it  
17 was turned over in the 2- or 3,000 so pages that  
18 we got, I didn't locate it. It's possible that  
19 it's there, and I'd ask you just identify it by  
20 Bates number or something.

21 MR. ASPLAND: Sure.

22 MR. TORCZYNER: But I'll tell, as far as I  
23 can tell, it's not there. And, yes, I'll follow  
24 it up in writing.

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1 MR. ASPLAND: Thank you.

2 DOCUMENT/INFORMATION REQUESTED:

3 Q. So you weren't assigned to a particular zone or  
4 sector, you were just making sure that things  
5 were where they were supposed to be that night;  
6 correct?

7 A. Yes. I don't have a particular area that I  
8 watch. I'm, basically, in charge of the city,  
9 the entire city.

10 Q. Did your car have -- well, it was an unmarked  
11 car; correct?

12 A. Yes.

13 Q. Okay. So it certainly didn't have a number on  
14 the side being unmarked; correct?

15 A. No.

16 Q. Were there any officers with you in the car?

17 A. No.

18 Q. Now, again, you don't have the roll call sheet  
19 with you or duty sheet with you, but Randy  
20 French, do you know if he was assigned to a  
21 particular sector that night?

22 A. He was the only sergeant, patrol sergeant, on  
23 that night, so he was assigned the entire city.

24 Q. So both, you and Sergeant French, were,

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1            basically, given discretion as far as where you  
2            were going to go within the city?

3            A.    Yes.

4            Q.    Do you ever assign particular tasks to sergeants  
5            telling them, I want you to focus on speeding or  
6            DWI or something of that nature?

7            A.    If I have a, you know, a complaint or something,  
8            I will give it to the sergeant and have him  
9            delegate that to who he deems, you know, fit in  
10           that particular zone. For example, if we had a  
11           -- in Zone 1, if we had a speeding problem on  
12           Spring Avenue, he would assign it to one of the  
13           patrol units in that zone.

14           Q.    Okay. This is probably on me, but I'll try to  
15           clarify it. Do you ever assign the sergeant that  
16           he should do something as opposed to delegate  
17           that task? Like, do you ever tell sergeant,  
18           whoever it is, I want you tonight to do a  
19           particular task?

20           A.    On occasion.

21           Q.    Have you ever told Sergeant French that you want  
22           him to do a particular task?

23           A.    I probably have. But as for anything specific, I  
24           don't recall.

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1 Q. My next question is going to be: Before that  
2 Sunday midnight tour, did you give Sergeant  
3 French any particular tasks?

4 A. No, not that I recall.

5 Q. When did you first meet Sergeant French?

6 A. It was back when he came out of field training.

7 Q. Field training's Zone 5, or is that's something  
8 else?

9 A. When he completed Zone 5. And after you complete  
10 the academy, you have to work with a field  
11 training officer for a certain amount of time.  
12 That's when I met him.

13 Q. That's, like, a ride-along, or it's more involved  
14 than that?

15 A. It's more involved. He's completed -- an officer  
16 would have completed the academy by then, and  
17 he's riding a training officer, and he's doing  
18 the job. The same task as, you know, you would  
19 be doing: answering calls, doing reports, that  
20 sort of thing.

21 Q. Is there a period of probation when one joins the  
22 Troy Police Department?

23 A. There is a probation period.

24 Q. They call them "probes," or they don't call them

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1           that there?

2           A.   No, they don't generally use that term.

3           Q.   Okay. And that's the first six months?

4           A.   As I recall, probation is a year.

5           Q.   And that year also partially encompasses the 5,  
6               or that's after the Zone 5?

7           A.   I believe that encompasses the time that you're  
8               at Zone 5.

9           Q.   How many months is Zone 5?

10          A.   I believe, total, it's approximately six months.

11          Q.   I mean, I know that you did it 20 years ago, but  
12               based on your recollection it's about six months?

13          A.   Yes.

14          Q.   And then afterwards, that officer starts doing  
15               patrol if he's assigned to it with a field  
16               training officer?

17          A.   Yes.

18          Q.   Do you know who Randy French's field training  
19               officer was?

20          A.   Yes.

21          Q.   Who was it?

22          A.   That was me.

23          Q.   So that's when you first met Randy French?

24          A.   Yes.

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1 Q. Okay. Do you ever socialize with Randy French  
2 outside of the police department prior to  
3 April 2016?

4 A. I do not.

5 Q. Do you know his wife? I'm assuming he's married.

6 A. Yes. Limited, but, yes, I do know who she is.

7 Q. Have you ever gone anywhere socially with  
8 Randy French and his spouse?

9 A. No.

10 MR. ASPLAND: Neil, just for point of  
11 clarification, the duty sheet was page 1 of  
12 Exhibit B on CD-1.

13 MR. TORCZYNER: Okay. Page 1, Exhibit B of  
14 CD-1.

15 MR. ASPLAND: Do you want me to see if she  
16 can print it and bring it in?

17 MR. TORCZYNER: Yeah, I actually have all  
18 three binders in my car, but I didn't bring extra  
19 copies of it.

20 MR. ASPLAND: I'll ask Ash if she can print  
21 it and bring it in.

22 MR. TORCZYNER: That would be great. Thank  
23 you. All right. So we'll continue with this. I  
24 guess on the next break, if you want to go back to



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1 that.

2 (An off-the-record discussion was held.)

3 BY MR. TORCZYNER:

4 Q. So you note that we've been talking briefly or  
5 somewhat briefly about Edson Thevenin; correct?

6 A. Yes.

7 Q. Did you ever meet Edson Thevenin prior to  
8 April 17th, 2016?

9 A. No.

10 Q. Have you ever heard of Edson Thevenin prior to  
11 April 17th, 2016?

12 A. No.

13 Q. Now, the first time that you interacted with the  
14 person who you now know to be Edson Thevenin, you  
15 didn't know that was his name; correct?

16 A. Correct.

17 Q. When did you first become aware of that person  
18 that night?

19 A. Become aware of him, himself, or just his name?

20 Q. No, not his name. You wound up going to the  
21 scene and following the car; correct?

22 A. Correct.

23 Q. That car, you later learned -- withdrawn.

24 You later learned the driver of that car was

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1 Edson Thevenin; correct?

2 A. Correct.

3 Q. When did you first become aware of the driver of  
4 that car, approximately, what time?

5 A. Sometime after Sergeant French called out with a  
6 traffic stop.

7 Q. Did you actually hear the traffic stop over the  
8 radio?

9 A. I heard portions of a traffic stop.

10 Q. What do you recall hearing?

11 A. That Sergeant French had called out on 6th Avenue  
12 with a vehicle.

13 Q. Not with one, just with a vehicle?

14 A. With a vehicle.

15 Q. Okay. And you believe that there was more to the  
16 transmission than what you heard?

17 A. On initial transmission of the vehicle stop, I  
18 just remember him calling out on a traffic stop  
19 with a vehicle. I don't recall -- I recall him  
20 giving a plate. I don't recall what the plate  
21 was at that time.

22 Q. Well, when you're hearing the radio, you're  
23 hearing all the traffic stops, so --

24 A. Yes.

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1 Q. -- you probably heard a bunch of them before that  
2 from the time you started your tour; correct?

3 A. I would say there was probably a few that were in  
4 that time.

5 Q. How long before hearing -- withdrawn.

6 Do you remember what time you actually left  
7 the station in a vehicle?

8 A. I don't recall what time I left the station that  
9 night in the -- in my vehicle.

10 Q. Did your vehicle have an MDT?

11 A. No.

12 Q. Did your vehicle have a dash cam?

13 A. No.

14 Q. To your knowledge, did Randy French's vehicle  
15 have a MDT?

16 A. I do not know that.

17 Q. To your knowledge, did Randy French's vehicle  
18 have a dash cam?

19 A. We do not have dash cams, so I would say no.

20 Q. That's a softball question.

21 At present, are there any dash cams in any  
22 vehicles?

23 A. Not that I'm aware of. In any patrol vehicle  
24 used in the patrol division, I am not aware of

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1 any cameras in those vehicles. I'm not aware of  
2 any cameras in our traffic cars either. So, at  
3 this time, I would say no.

4 Q. Okay. And, theoretically, there might be some of  
5 the detective vehicles, but not in these  
6 vehicles; correct?

7 A. It's possible. I do not have any knowledge of  
8 that.

9 Q. Is there anything that you would record when you  
10 first entered your vehicle that night?

11 A. We do have cameras at the station. It's possible  
12 that that may have recorded that.

13 MR. TORCZYNER: Off for a second.

14 (An off-the-record discussion was held.)

15 MR. TORCZYNER: Can we mark this as 5,  
16 please.

17 (Plaintiffs' Montanino Exhibit 5 was  
18 marked for identification.)

19 BY MR. TORCZYNER:

20 Q. I'm going show you a document that's been marked  
21 Montanino 5. Take a look at it, let me know when  
22 you're done.

23 A. Yes.

24 Q. Is this the document that you were referring to

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1 before as a roll call or roster or it calls  
2 itself, "First Platoon Daily Sheet," is this the  
3 document you were referring to?

4 A. Yes, it is.

5 Q. When is this document, generally, filled out?  
6 Forget about the one that says, "here, Sunday,  
7 April 17th."

8 A. Generally, they're filled out maybe a couple of  
9 days before the shift. But as the days come to  
10 the shift or at the beginning of the shift, some  
11 things change such as somebody may call in a day  
12 off or call in sick or something like that. So  
13 they would -- if they were on the sheet they  
14 would be removed from it, and then their spot  
15 would be open for bid by somebody who would be  
16 considered an extra.

17 Q. Okay. So you have certain names that are typed  
18 in, and certain names that are handwritten.

19 Generally, are those handwritten names added  
20 after the -- withdrawn.

21 The question's fairly obvious, but when is  
22 the typed portion of these sheets prepared?

23 A. Generally, a few days before a shift. They try  
24 to add them, at least, three days, three or four

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1 days ahead of schedule. So if the schedules made  
2 out and, again, as the days go by it's subject to  
3 change due to various reasons: sick, vacation  
4 time, comp time, somebody calls in.

5 Q. And this sheet itself has indications for zone  
6 assignments. You see that there are various  
7 officers that are indicated in first, second,  
8 third, and fourth?

9 A. Yes.

10 Q. The incident that took place was on the Collar  
11 Street Bridge; am I saying that correctly?

12 A. Collar City Bridge.

13 Q. Collar City Bridge. Which zone is that in?

14 A. That's in Zone 2.

15 Q. Okay. Which of the officers indicated in Zone 2  
16 would have been assigned to that particular  
17 bridge?

18 A. Officer Dean and Officer Parker.

19 Q. So 201 and 202 are not portions of Zone 2,  
20 they're given free rein for the entire zone?

21 A. That's correct. They cover the entire zone.

22 MR. TORCZYNER: Off the record.

23 (An off-the-record discussion was held.)

24 BY MR. TORCZYNER:

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1 Q. What does "UPR" mean?

2 A. That's a uniform patrol rifle.

3 Q. Meaning, they were issued a rifle?

4 A. It means they carry one -- I'm sorry. Urban  
5 patrol rifle, it means they carry that while  
6 they're on duty. They may have that, or they may  
7 have a shotgun.

8 Q. What's an "SG"?

9 A. That's a shotgun.

10 Q. Is "TAS" a Taser?

11 A. Yes.

12 Q. Is there, generally, anything on these forms that  
13 indicates someone's been issued pepper spray also  
14 known as OC?

15 A. No.

16 Q. There's nothing there that mentions batons;  
17 correct?

18 A. Correct.

19 Q. Every officer is supposed to carry a baton?

20 A. Yes.

21 Q. Are officers given discretion as far as which  
22 kind of batons they carry?

23 A. Yes.

24 Q. Is there a standard-issued baton that the police

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1 department issues?

2 A. Yes.

3 Q. What is that?

4 A. It's either the collapsible baton, or the wooden  
5 nightstick.

6 Q. You ever heard of the term "Cocobolo"?

7 A. Yes.

8 Q. Is that the collapsible baton, or is that  
9 something else?

10 A. That's an older term for the certain wooden  
11 nightsticks.

12 Q. To your knowledge, do you know if any of the  
13 officers that were on duty that night were  
14 carrying collapsible batons?

15 A. Each officer on their duty belt is -- you know,  
16 has a collapsible baton. So I would say that  
17 they're part of their equipment. On their duty  
18 belt is the collapsible baton.

19 Q. It indicates that Sector 311 is an officer named  
20 Marble, and then there's an "08" next to it. Is  
21 there something special about Sector 311 that  
22 it's separate on this sheet?

23 A. The 311 is the evidence technician that night.  
24 Their destinations are either 111, 211, or 311,



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1 depending what squad they're in: 1, 2, or 3.

2 Q. What does "late" mean?

3 A. "Late" means that that officer is working the  
4 midnight to 8 shift.

5 Q. As opposed to the 11:30 to 7:30?

6 A. Correct.

7 Q. That doesn't mean they came late to duty?

8 A. No.

9 Q. Okay.

10 A. It's more or less for a guidance for the  
11 dispatchers for, say, early morning calls after  
12 7:00, instead of assigning it to somebody that's  
13 leaving at 7:30. If we have a late car, they  
14 can, generally, handle those calls.

15 Q. What does "CT0600-0800" mean, were it's stated  
16 over Feeley?

17 A. That he was to take comp time that morning. So  
18 he was going to be leaving at 0600, 6 a.m. in the  
19 morning for the rest of his shift. So from 6 to  
20 8 in the morning he was going to leave on two  
21 hours of comp time, compensatory time.

22 Q. Now, this sheet that's marked as Montanino 5,  
23 this wasn't modified after roll call, as far as  
24 you can tell; correct?

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1 A. Correct.

2 Q. So if during the course of a shift, if an officer  
3 develops an ailment or something else that would  
4 require them to leave their active patrol, would  
5 that be recorded anywhere?

6 A. They would -- not on this sheet. If they were  
7 required -- or if they had to leave, you know,  
8 due to an illness, a sick sheet would be filled  
9 out. If they had to leave on personal time or  
10 something, they would fill out a specific sheet  
11 for that.

12 Q. Okay. Now, many police precincts have a blotter  
13 that they record things that occur during the  
14 shift.

15 To your knowledge, does the Troy Police  
16 Department have a blotter?

17 A. Yes.

18 Q. Okay. Where is that maintained?

19 A. That's at the desk, police desk.

20 Q. Did you ever see the blotter for April 17th,  
21 2016?

22 A. Yes.

23 Q. Do you recall whether the events of the  
24 officer-involved shooting were, in any way,

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1 written on that blotter?

2 A. I don't recall.

3 Q. When was the last time that you looked at that  
4 blotter?

5 A. In reference to that night?

6 Q. Well, do you recall the last time that you looked  
7 at the blotter for April 17th, 2016?

8 A. Probably at the beginning of the shift that  
9 night, and that would be -- have been the last  
10 time that I looked at it.

11 Q. Okay. Did you ever look at that blotter after  
12 that shooting took place?

13 A. Yes, I have.

14 Q. Okay. Did you enter anything on that blotter in  
15 connection with the shooting?

16 A. No.

17 MR. TORCZYNER: Okay. I'm going to ask for  
18 production of the blotter to the extent it hasn't  
19 been provided already. We'll follow up in  
20 writing.

21 MR. ASPLAND: Thank you.

22 DOCUMENT/INFORMATION REQUESTED:

23 Q. Do you know someone name Phil Gross?

24 A. Yes.

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1 Q. Okay. Now, Phil Gross, there's a Phil Gross the  
2 II, or Phil Gross, Jr., and there's a Phil Gross  
3 the III. Which Phil Gross do you know, or both?

4 A. I'm aware of a father named Phil Gross, and I'm  
5 aware of a son named Phil Gross.

6 Q. Which of the Phil Gross's that you know operates  
7 a tow truck?

8 A. That would be the younger. I believe it would be  
9 the son.

10 Q. When did you first meet Phil Gross?

11 MR. ASPLAND: The son?

12 MR. TORCZYNER: Yes, the son. Thank you.

13 A. The night of the incident on the Collar City  
14 Bridge on April 17th, 2016.

15 Q. You had never met Phil Gross, the son, before?

16 A. I've seen him before, but I've never had any  
17 direct -- I know who he is, never had any  
18 interaction with him.

19 Q. Had you interacted with Phil Gross's father prior  
20 to April 17th, 2016?

21 A. Again, I just know who he is, never had any  
22 interaction with him.

23 Q. Where do you know the father from?

24 A. Over in the Village of Green Island.

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1 Q. What about the Village of Green Island, what is  
2 it that you know him from, other than the fact  
3 that he lives in the Village of Green Island?

4 A. I believe that he was a -- and I'm not sure if he  
5 still is -- a member of the town board there.

6 Q. Is the Village of Green Island part of Troy?

7 A. No.

8 Q. It's an separate municipality?

9 A. Yes.

10 Q. Are there villages within Troy?

11 A. No.

12 Q. Did you ever speak with Phil Gross after  
13 April 17th, 2016 -- withdrawn.

14 Since we have two people named Phil Gross,  
15 we'll make it clear, even though I think you know  
16 what my question was. But I just want to make  
17 sure for the record so that when someone reads  
18 what the young lady to your left is writing down,  
19 they'll know what I mean.

20 Did you ever speak to Phil Gross, the tow  
21 truck driver, after April 17th, 2016?

22 A. Yes.

23 Q. Okay. When did you speak with him?

24 A. I spoke with him briefly in reference to towing a

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1 vehicle in the Village of Green Island.

2 Q. Was that in your official capacity as a Troy  
3 police captain, or that was a private  
4 conversation?

5 A. That was in my capacity as a police officer in  
6 the Village of Green Island.

7 Q. When were you a police officer in the Village of  
8 Green Island?

9 A. I'm currently a police officer in the Village of  
10 Green Island part time.

11 Q. When did you become a police officer in the  
12 Village of Green Island?

13 A. Approximately 2008, as I recall.

14 Q. Obviously, the City of Troy knows that you're  
15 also an officer in the Village of Green Island;  
16 correct?

17 A. Yes, they do.

18 Q. Are you an officer in any other municipal police  
19 force?

20 A. No.

21 Q. What are your hours in the Village of Green  
22 Island?

23 A. They vary. Generally, it's two days a week.

24 Generally, a day shift, which would be 7:30 to

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1 3:30.

2 Q. It's not a stretch for me to say that's not when  
3 you're coming off an overnight shift from the  
4 City of Troy usually; right?

5 A. No, it does happen that way, yes.

6 Q. Did you ever talk to Phil Gross about the events  
7 that took place that night of April 17th, 2016?

8 A. No.

9 Q. Let's go back to April 17th of 2016.

10 Had you taken a meal break prior to  
11 responding to the call from the traffic stop?

12 A. No.

13 Q. Do you recall for yourself whether that was your  
14 first day on, or you had been on previously?

15 A. As I recall, that was my weekend to work. I'm  
16 off three weekends, and I have to work one  
17 weekend. So that weekend there, particular, I  
18 would have come in Friday night for Saturday at  
19 11 p.m., and, then again, I would have come in  
20 Saturday night at 11 p.m. for Sunday. I don't  
21 recall, at this time, whether I had taken Friday  
22 night or Saturday off.

23 Q. Okay. When you take a meal break do you record  
24 that anywhere in a notebook, or anything else of

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1           that nature?

2           A.    No.

3           Q.    Do you have to radio that in that you're taking a  
4           meal break?

5           A.    You do. Myself I don't take a meal break. If  
6           I'm in the office, I might grab an apple or  
7           something like that. But I, generally, don't  
8           take a meal break.

9           Q.    I'm not specifically asking about whether or not  
10          you eat on the job.

11                But generally you've been a police officer  
12          for 24 years?

13          A.    A total of almost 26 now.

14          Q.    26 years. So generally officers do have a meal  
15          break time when they're technically not on active  
16          patrol?

17          A.    Yes, they're allowed to take a half-hour meal  
18          break, but that may be shortened if they are  
19          needed for service.

20          Q.    Of course. But, you, yourself don't generally  
21          take meal breaks when you're on duty as a  
22          captain?

23          A.    I do not.

24          Q.    Okay.



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1 MR. TORCZYNER: Let's go off for a second.

2 (An off-the-record discussion was held.)

3 BY MR. TORCZYNER:

4 Q. So let's go back to the documents that were  
5 marked previously. Let's go back to Exhibit 1.

6 Do you know when you prepared this document?

7 A. Yes, Tuesday, April 19th, 2016, at 23:45 hours.

8 Q. So basically right when you started your shift or  
9 approximately soon after you started your shift,  
10 the first day back on duty?

11 A. That's correct.

12 Q. So this would be the Wednesday midnight tour;  
13 correct?

14 A. Yes. Tuesday night into Wednesday, yes.

15 Q. So then you were not working Monday midnight and  
16 Tuesday midnight, and then you started the  
17 Wednesday midnight tour at 11:00 Tuesday night?

18 A. Yes.

19 Q. In the sequence of documents that you've looked  
20 at, if you've identified that you had prepared,  
21 this would not have been the first document that  
22 you prepared that memorialized the events of that  
23 night; correct?

24 A. Correct.

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1 Q. Is there a requirement as to when an incident  
2 report should be prepared, how long after the  
3 incident takes place?

4 A. Depending on the incident.

5 Q. Okay. Well, in this case you have an  
6 officer-involved shooting. When are these  
7 incident reports supposed to be prepared, to your  
8 knowledge?

9 A. The officer responsible as soon as possible as  
10 they can be prepared.

11 Q. Okay. Is there a reason this wasn't prepared  
12 during the midnight shift that you were doing  
13 that ended, approximately, 7 or 9:00 in the  
14 morning on the 17th?

15 A. Yes.

16 Q. Okay. And what was that reason?

17 A. Due to the fact of the -- having been up, having  
18 been through a traumatic experience, and being --  
19 like, I guess, just that word traumatic  
20 experience itself, exhausted, I was allowed to be  
21 able to complete the necessary reports when I  
22 returned to duty.

23 Q. Who made the determination as to when this report  
24 would be completed?

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1 A. I believe I spoke with Chief VanBramer about  
2 completing the reports.

3 Q. When did you start preparing this report?

4 A. This particular number, Montanino 1?

5 Q. Yes.

6 A. The night I came back to duty on Tuesday, the  
7 19th of April, 2016.

8 Q. Do you know if there are any prior drafts of this  
9 report?

10 A. No.

11 Q. No, you don't know, or are there no prior drafts?

12 A. No, this is my original and only report.

13 Q. Okay. I'm going to show you something, which  
14 we're going mark, please.

15 (Plaintiffs' Montanino Exhibit 6 was  
16 marked for identification.)

17 Q. I'm going to show you a document now that's  
18 marked Montanino 6. Please take a look at it,  
19 and let me know when you're done.

20 A. Okay.

21 Q. What -- is there a name for this document?

22 A. It's a TPD 120. It's a supplemental report.

23 Q. Did you prepare this document?

24 A. I did not prepare this particular document that I

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1 have in front of me.

2 Q. Do you know who prepared it?

3 A. It looks like Sergeant McMahon's signature on the  
4 bottom of it.

5 Q. Who's Sergeant McMahon?

6 A. He's one of the detectives in the police  
7 department, Detective Sergeant McMahon.

8 Q. Did you ever talk to Detective Sergeant McMahon  
9 about the officer-involved shooting from  
10 April 17th, 2016?

11 A. I recall him showing up at the scene. I don't  
12 recall going into any kind of great detail about  
13 the incident with him.

14 Q. Great detail and not talking to him about it are  
15 two different things.

16 Do you recall talking to him about the  
17 incident?

18 A. I remember him being there on scene. I may have  
19 given him a bit of what had taken place, but I  
20 don't exactly recall what I had said to him that  
21 night.

22 Q. Okay.

23 A. Whatever it was though, I know I was very limited  
24 with him.

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1 Q. So let's go then, please, to -- if you want to  
2 put that back on the stack, that would be great.  
3 Let's go to Montanino 2, please.

4 This is a typed statement that you've signed  
5 on the bottom; correct?

6 A. Yes.

7 Q. Did you actually type this, or did someone else  
8 type it for you?

9 A. No, I did not type it. Sergeant White typed it.

10 Q. Is Sergeant White's signature where it says  
11 "witness"; is that what it says? I can't read  
12 what it says next to "sergeant."

13 A. Yes, it is.

14 Q. Was Sergeant White typing this as you spoke, or  
15 was it something that was typed after you were  
16 done speaking?

17 A. As I was speaking with him he was typing.

18 Q. Did Sergeant White have any input as to what went  
19 into this document?

20 A. No.

21 Q. Was there a prior version of this document other  
22 than the one that you've signed?

23 A. No.

24 Q. Did you ever write down in your own handwriting

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1 the events that took place during that midnight  
2 tour on April 17th, 2016?

3 A. Not in handwriting.

4 Q. Okay. Did you ever type it on a typewriter or  
5 computer?

6 A. Yes, I typed a supplemental report on a computer.

7 Q. And that's one of the documents that we marked  
8 previously?

9 A. Yes.

10 Q. Okay. So we'll get to that. So let's put that  
11 back on the stack, please. And let's go to  
12 Montanino 3, please. Take a look at it, and let  
13 me know when you're done, please.

14 A. Okay.

15 Q. Did you type this report yourself?

16 A. I did.

17 Q. Is this a report that needs to be completed; is  
18 that something you independently determined you  
19 would like to prepare?

20 A. This is a report that needed to be completed.

21 Q. And what required this to be completed?

22 A. My involvement with the incident.

23 Q. Okay. Does this supplement your prior report --  
24 withdrawn.

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1 Does this supplement the deposition, or does  
2 it supplement something else, as you use the term  
3 as supplemental?

4 A. It's for the report for the incident.

5 Q. So the document that's Montanino Exhibit 3 is  
6 meant to supplement Montanino Exhibit 1; is that  
7 correct?

8 A. Yes, I have in the upper left corner of Montanino  
9 3, type of original report, PPR, which is a post  
10 pursuit report.

11 Q. If you could put it back on the stack, please.  
12 And the last document that we've referred to is  
13 the City of Troy, it's a response to resistance  
14 report?

15 A. Yes.

16 Q. And when did you prepare that?

17 A. 4/20 of '16.

18 Q. Is this the last document in sequence that was  
19 prepared?

20 A. Yes.

21 Q. Just going back to 3 for a minute, which was the  
22 supplemental report.

23 Were there any prior drafts of that report,  
24 or is that the only draft that was ever prepared?

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1 A. This is the only draft.

2 Q. Okay. Now, going back to 4, the same question.

3 Was that the only draft that was prepared,  
4 or were there prior drafts?

5 A. This is the only draft.

6 Q. Who determines that a response to resistance  
7 report be prepared?

8 A. It's in our -- within our policy and procedure.

9 Q. Okay. Now, you prepared this response to  
10 resistance report yourself; correct?

11 A. Yes.

12 Q. And you signed it on the page that has 326 on the  
13 bottom?

14 A. Yes.

15 Q. Okay. And then you also signed it for review on  
16 3/27, correct -- page 327?

17 A. Yes.

18 Q. Now, the reason -- withdrawn.

19 Why would you sign this as the review as  
20 commanding officer?

21 A. I had signed just in that spot. That's where it  
22 had the commanding officer's signature.

23 Q. Is it the commanding officer's responsibility to  
24 review all responses to a resistance report for



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1 events that took place during their shift?

2 A. Yes.

3 Q. So anyone who responds to resistance during that  
4 shift would have been required to prepare a  
5 report and submit it to you for review?

6 A. It would first go to the patrol sergeant for  
7 review, and then it would come to me for review.

8 Q. Is there anywhere on this form where a patrol  
9 sergeant signed off on your response to  
10 resistance?

11 A. There is a spot for a patrol sergeant, but no  
12 patrol sergeant signed the document.

13 Q. What requires a response to resistance report to  
14 be filled out; what level of response?

15 A. One, if you draw your duty weapon and you have to  
16 point it at someone, that would require the  
17 filing of this report as well as using any type  
18 of physical force on someone.

19 MR. TORCZYNER: Let's mark this as 7.

20 (Plaintiffs' Montanino Exhibit 7 was  
21 marked for identification.)

22 Q. I'm going to show you now a document that's been  
23 marked Montanino 7. It's a response to  
24 resistance report. This was filled out by whom?

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1 A. Officer David Dean.

2 Q. Okay. I'd like you to go, please, to the very  
3 last page of the report.

4 Do you see your signature on this?

5 A. I do.

6 Q. Did you, in fact, review this report?

7 A. I did.

8 Q. Now, there's no patrol sergeant indicated on this  
9 one as well. Do you know why the patrol sergeant  
10 did not sign this report?

11 A. The patrol sergeant at the time was Sergeant  
12 French who was involved in the incident, so he  
13 was unavailable to sign the report.

14 Q. Do you know whether Sergeant French prepared a  
15 response to resistance report?

16 A. I do not recall that.

17 Q. Do you recall ever seeing a response to  
18 resistance report from Sergeant French?

19 A. I do not recall.

20 Q. I'll tell you I didn't receive one from counsel,  
21 and I'm a hundred percent certain that counsel,  
22 seated to your right, did not get one either.

23 Why would Sergeant French -- withdrawn.

24 To your knowledge, has an officer who's ever

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1           used his service weapon ever been excused from  
2           filling out a response to resistance report?

3       A.    I'm not aware of that.

4       Q.    Okay. Did you ever ask Sergeant French to  
5           prepare a response to resistance report for the  
6           incident on April 17th, 2016?

7       A.    No.

8       Q.    Why didn't you ask him to fill one out?

9       A.    I haven't had any contact with him.

10      Q.    You had no contact with Randy French since this  
11           shooting?

12      A.    The only time that I saw Sergeant French was at  
13           the grand jury, and after that I have not seen  
14           him at work at all to request anything like that.  
15           And I believe that, from that point on, that that  
16           would rest upon Assistant Chief VanBramer or  
17           Captain Centanni who was in charge of the  
18           Internal Affairs Bureau to obtain that from him.

19      Q.    Did you ever talk to the Internal Affairs Bureau  
20           about this incident?

21      A.    No.

22      Q.    Have you ever been aware of a situation where an  
23           officer prepared a response to resistance report,  
24           but it was not submitted to their captain for

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1 review and signature?

2 A. Yes.

3 Q. What were the circumstances of that event?

4 A. If I am not working on a day off, something like  
5 that, the sergeant would sign the response to  
6 resistance report, and he would forward that on  
7 to the Records Bureau where it would then go to  
8 the Internal Affairs Bureau reviewed by Captain  
9 Centanni.

10 That's so that there's no delay in getting  
11 the reports in on time if I was out for a day or  
12 two, or whatever the case may be. Out for an  
13 extended period of time where my signature  
14 wouldn't, you know, be on it.

15 Q. Is it possible that the response to resistance  
16 report was filled out by Sergeant French, but  
17 went to the Internal Affairs Bureau?

18 A. I would say that that's a possibility.

19 MR. TORCZYNER: Okay. We're going ask for  
20 production of a response to resistance report in  
21 the event that it was prepared. I guess when we  
22 speak with Sergeant French he'll let us know  
23 whether he prepared one or not. But in the event  
24 that you are able to -- this is obviously directed

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1 at counsel -- that you're able to locate one prior  
2 to that deposition, it would be appreciated.

3 MR. ASPLAND: Definitely.

4 MR. TORCZYNER: Again, assuming that it's  
5 within your client's possession.

6 DOCUMENT/INFORMATION REQUESTED:

7 Q. Do you know whether there was an internal affairs  
8 investigation of the officer-involved shooting?

9 A. I do not know that.

10 Q. Do you know whether anyone was disciplined by the  
11 police department as a result of the  
12 officer-involved shooting?

13 A. I am not aware of that.

14 Q. From the scene of the shooting, was Officer  
15 French transported anywhere by -- for medical  
16 treatment?

17 A. Yes.

18 Q. Where was he transported?

19 A. He was transported to Albany Medical Center.

20 Q. The Whitehall Street area?

21 A. It's in the City of Albany. New Scotland Avenue  
22 I believe is the address -- or the street. I'm  
23 not sure of the exact address.

24 Q. Did you visit Officer -- Sergeant French in the

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1 hospital?

2 A. No.

3 Q. Let's go back to the daily sheet, which I believe  
4 is 5. Am I correct; is it Exhibit 5?

5 A. Yes.

6 Q. Okay. There are a number of individuals that are  
7 indicated there for various zone assignments.  
8 Had all of these individuals worked for your  
9 shift -- withdrawn.

10 Had all of these individuals worked under  
11 your command prior to April 17th, 2016?

12 A. Yes.

13 Q. Are any of the individuals listed on this sheet  
14 no longer employed by the City of Troy Police  
15 Department?

16 A. Everyone that is on this sheet is currently  
17 employed by the City of Troy Police Department.

18 Q. Okay. So you had mentioned that had you heard  
19 part of that radio call that Sergeant French had  
20 done a traffic stop with the vehicle.

21 Where were you, at that point, when you  
22 heard that radio call?

23 A. I was -- I don't recall my exact location. I  
24 know I was traveling to the north end of -- well,

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1 the north end of the Zone 3, Zone 4 border. I  
2 had been coming from the south end of the city.  
3 The officers were -- had responded to a  
4 disturbance call on River Street, just south of  
5 101st Street, with a large number of people in  
6 the house.

7 I had headed that way from the south Troy  
8 area to Zone 1 area. I don't exactly recall  
9 where I was when Sergeant French called out with  
10 the traffic stop, but I do know that I was -- I  
11 believe I was just about at the scene of River  
12 Street shortly thereafter.

13 Q. Is it typical for a patrol sergeant to make a  
14 traffic stop?

15 A. Yes.

16 Q. Do you patrol sergeants generally go out and make  
17 traffic stops as part of their duties?

18 A. I would hope that they would if they have  
19 something that's a violation that occurs in front  
20 of them.

21 Q. Did you take any action after hearing Sergeant  
22 French indicate that he had made a traffic stop?  
23 Do you understand the question I'm asking you?

24 A. No.

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1 Q. Okay. So you heard him say that he was with a  
2 vehicle; correct?

3 A. Yes.

4 Q. Did you do anything in response to hearing  
5 Sergeant French say that he was with a vehicle?

6 A. I did not.

7 Q. How much later after you heard Sergeant French  
8 say that he was with a vehicle did you hear  
9 anything else from Sergeant French over the  
10 radio?

11 A. Yes.

12 MR. TORCZYNER: Can you read back the  
13 question.

14 (The requested testimony was read back.)

15 MR. ASPLAND: Do you understand what he's  
16 asking? You can ask him to rephrase it if you  
17 don't. That's why he had it read back.

18 A. I believe that you're asking if I heard any more  
19 radio transmission from him?

20 Q. No. I'll ask it again. It's fine. It's on me.

21 How long after you heard Sergeant French say  
22 that he was with a vehicle did you hear something  
23 next from Sergeant French?

24 A. I did. It was -- I don't know how long it was of



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1 a time period. Maybe a few minutes to five  
2 minutes, maybe. I'm not exactly sure on an exact  
3 amount of time.

4 Q. What's the next thing you heard from  
5 Sergeant French?

6 A. I heard something along the lines, I need some  
7 help.

8 Q. Was there a code for the help that he needed, or  
9 was it just, I need some help?

10 A. Just, I need some help. Something along those  
11 lines.

12 Q. Okay. When an officer's trouble, is there a  
13 particular code that's supposed to go out over  
14 the radio to indicate that the officer needs  
15 assistance?

16 A. We don't generally use any kind of code. It's  
17 just officer needs assistance, and respond that  
18 way.

19 Q. Okay. Do you recall the words that Sergeant  
20 French used when he said he needed assistance?

21 A. I could refer to my report. I may have written  
22 it in there. I may have exact wording there.  
23 But as I recall it sounded like, I need help.

24 Q. And what did you do after you heard that?

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1 A. I left the location on River Street and started  
2 heading towards the direction of Sergeant  
3 French's traffic stop on 6th Avenue.

4 Q. And how long did it take you to get there?

5 A. Approximately, a minute or two to get down to the  
6 area.

7 Q. What's the approximate distance between 6th  
8 Street and 101st Street?

9 A. From 101st Street to Hoosick Street, I'd say,  
10 it's approximately -- approximately, 11, 12  
11 blocks.

12 Q. So 101st Street doesn't mean that there are a  
13 hundred other streets there; right?

14 A. No.

15 MR. TORCZYNER: Off the record for a minute.

16 (An off-the-record discussion was held.)

17 BY MR. TORCZYNER:

18 Q. Were you using lights and sirens in responding to  
19 that call?

20 A. Yes.

21 Q. When was the first time that you saw Sergeant  
22 French's vehicle after you responded to that  
23 call?

24 A. As I was approaching the intersection of Hoosick

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1 Street and 6th Avenue I had observed  
2 Sergeant French's patrol vehicle northbound on  
3 6th Avenue approaching Hoosick Street and making  
4 a -- preparing to make a right-hand turn on  
5 Hoosick Street going eastbound.

6 Q. Okay. Did you see any other vehicle --  
7 withdrawn.

8 Did you see a vehicle that was being chased  
9 by Sergeant Smith's vehicle?

10 MR. ASPLAND: French.

11 Q. I'm sorry. Did you see another vehicle being  
12 chased by Sergeant French's vehicle?

13 A. Yes.

14 Q. Can you describe the vehicle that you saw?

15 A. At the time when I initially saw it I could tell  
16 it was a smaller dark-colored vehicle.

17 Q. The radio call when Sergeant French said that he  
18 required assistance, was there anything specific  
19 as to what he needed assistance with, or just  
20 that he needed assistance?

21 A. That particular transmission was just that he  
22 needed help.

23 Q. Did you know at that point that Sergeant French  
24 was chasing a vehicle?

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1 A. When he had requested the help?

2 Q. Yes.

3 A. No.

4 Q. When did you -- withdrawn.

5 Did you have any communication with  
6 Sergeant French to indicate that you were coming  
7 to his assistance? Do you understand the  
8 question I'm asking you?

9 A. I did not radio him to say I was coming to him,  
10 to him directly, if that's what you're asking.

11 Q. Yes. Did you radio at all to say that you were  
12 responding?

13 A. I don't recall if I did.

14 Q. Where there other transmissions from Sergeant  
15 French during that time period between when you  
16 left 101st and when you saw Sergeant French's  
17 vehicle turning onto Hoosick?

18 A. Yes.

19 Q. What do you recall about those transmissions?

20 A. I recall him saying that the subject just had  
21 tried to run him over. At that point in time I  
22 was in the area of Jay Street and River Street,  
23 which was, approximately, about a block  
24 and-a-half north of Hoosick Street, which, at

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1           that point in time, would put me in  
2           approximately, maybe a three- to four-block  
3           distance from Hoosick and 6th Avenue.

4       Q.   Was that the only transmission that you heard  
5           from Sergeant French during that interim period?

6       A.   I believe he indicated that the vehicle was going  
7           northbound on 6th Avenue, and then it was turning  
8           onto Hoosick Street.

9       Q.   Do police officers ever communicate with each  
10          other in any way other than on the radio?

11      A.   Yes.

12      Q.   Do officers on duty ever communicate with each  
13          other by cellular phone?

14      A.   Yes.

15      Q.   Did you communicate with Sergeant French by  
16          cellular phone during this period when you were  
17          responding?

18      A.   No.

19      Q.   So what happens next after you see Sergeant  
20          French's vehicle turning onto Hoosick Street  
21          following this dark-colored vehicle?

22      A.   I proceeded behind Sergeant French's vehicle.  
23          After he went through the intersection and made  
24          his turn, I had then had slowed down for the

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1 intersection allowing him to turn in front of me  
2 to follow the vehicle, at which time, I then got  
3 behind him, and I had called out on the radio  
4 that -- to him that I would call out the pursuit.  
5 Generally speaking, if someone's pursuing a  
6 vehicle, you like to have two vehicles there so  
7 the first vehicle can concentrate on driving and  
8 observing the suspect vehicle, and then the  
9 officer behind him can pay a little more  
10 attention to directions and giving where the  
11 vehicles are headed.

12 Q. So basically you're the color commentator to  
13 everybody else, letting them know where the  
14 officer's pursuing?

15 A. Yes.

16 Q. So I'll use the sport analogy. It's in my blood.

17 A. That's fine.

18 Q. Were you receiving radio calls from other  
19 officers during this time period while you were  
20 in pursuit?

21 A. Was anybody calling me directly, is that --

22 Q. Well, were people calling out and asking for  
23 information, and you were responding as far as  
24 where you were?

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1 A. There is was radio traffic. I don't recall  
2 exactly what was being said because I was focused  
3 on, you know, the incident at hand at that point  
4 in time.

5 Q. Do you know why Sergeant French was pursuing this  
6 vehicle?

7 A. After his radio transmission that the car tried  
8 to -- almost ran him over, I had taken it that  
9 that vehicle had just tried to run him over, and  
10 that's why he was pursuing the vehicle.

11 Q. So what happens next after you assumed this  
12 position of color commentating, for using an  
13 artful term?

14 A. The suspect vehicle that was ahead of Sergeant  
15 French was eastbound on Hoosick Street going up  
16 the incline. Hoosick Street runs between the  
17 entrance for the westbound lane of the Collar  
18 City Bridge, and the eastbound exit lane coming  
19 off the bridge.

20 I observed that the suspect vehicle had  
21 crossed over into the westbound lane of Hoosick  
22 Street and went around the edge of the bridge, a  
23 little barrier at the end there, and made the  
24 turn to go westbound on the Collar City Bridge.

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1 Q. So he was driving the wrong way on the Collar  
2 City Bridge at this point?

3 A. No, he had crossed over -- again, as I said,  
4 Hoosick Street runs between the two entrances.  
5 So he had crossed over from the eastbound lane on  
6 Hoosick Street into the westbound lane. So he  
7 was in the westbound lane going eastbound. He  
8 was basically in the wrong lane going eastbound  
9 on Hoosick Street.

10 Q. So he was driving the wrong way on Hoosick  
11 Street?

12 A. Yes.

13 Q. During this time that you're following the  
14 vehicle, what's the highest rate of speed that  
15 that vehicle's traveling, to your knowledge?

16 A. I couldn't give an exact, you know, speed. The  
17 vehicle had made the turn onto the bridge, so I  
18 think, you know, he had to slow down somewhat in  
19 order to make the turn without crashing right  
20 there.

21 Q. Now, prior to making that turn onto the bridge  
22 there are high-speed pursuits, there are  
23 low-speed pursuits, there are historically  
24 low-speed pursuits that you see on the press,



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1 someone who just made parole, would you have  
2 characterized this pursuit as high speed or low  
3 speed or just average driving, and the individual  
4 just wasn't following instructions to pull over?

5 A. At that particular point, right in that --

6 Q. Before the turn --

7 A. -- before that area, that short area between 6th  
8 Avenue and 8th Street, I would not consider it a  
9 high-speed pursuit. I don't believe speed was  
10 able to get up that quick, you know, to a  
11 high-speed pursuit. But I would say it was low  
12 to average, you know, at least normal speed,  
13 maybe 40 miles an hour, possibly.

14 Q. At any point when you were following the vehicle,  
15 which you now know is the Edson Thevenin vehicle,  
16 did it ever exceed the speed limit?

17 A. I can't answer that.

18 Q. Fair enough. The questions are best of your  
19 recollection.

20 Okay. So what happens next after he goes in  
21 the wrong lane of the traffic?

22 A. He then makes -- would be a more of a left-hand  
23 turn to get onto to the entrance to the Collar  
24 City Bridge. So his vehicle makes the left and

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1 gets onto the bridge. At that point in time, as  
2 he had rounded that barrier right there at the  
3 corner of the bridge, Sergeant French's patrol  
4 vehicle then started to make the turn onto the  
5 bridge, which time I was behind him. I had to  
6 slow down in order to make the turn.

7 As I was making the turn, I observed that  
8 the suspect vehicle had -- was in the left lane.  
9 There was two lanes there, a left- and right-hand  
10 lane, suspect vehicle was in the lane, and had  
11 crashed into the concrete barrier on the bridge.

12 Q. Okay. Which compass direction is the vehicle  
13 traveling before it crashes into the concrete  
14 barrier?

15 A. Westbound.

16 Q. And that was the correct -- the correct direction  
17 of traffic, or was he still driving against  
18 traffic at that point?

19 A. That was the correct direction.

20 Q. So he's driving westbound on a westbound lane,  
21 and he's in the left lane of two lanes going  
22 west?

23 A. Yes.

24 Q. Do you know -- withdrawn.

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1 Did you see what caused his vehicle to hit  
2 that cement barrier?

3 A. No.

4 Q. Did you actually see the vehicle hit the cement  
5 barrier?

6 A. No.

7 Q. Do you know whether his vehicle was propelled by  
8 another vehicle into the cement barrier?

9 A. No, it was not.

10 Q. How do know that?

11 A. Because Sergeant French's vehicle had just made  
12 the turn onto the bridge, and there was distance  
13 behind him. So when I had made the turn Sergeant  
14 French's vehicle was not right at the back of his  
15 -- of the suspect vehicle at that time.

16 Q. When the suspect vehicle hits that cement barrier  
17 did it stop dead, or was it still moving? You  
18 said it crashed into the barrier. Did it bounce  
19 off and then keep going, or did it stop?

20 A. It was stopped.

21 Q. Approximately, how long after that cement --  
22 withdrawn.

23 Approximately, how long after the vehicle  
24 hits the cement barrier does Officer French pull

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1 his vehicle in front of that stopped vehicle?

2 A. I'd say right after it happened.

3 Q. Like moments?

4 A. Moments.

5 Q. Are your windows open at this point in the car?

6 A. I believe I had my window open a little bit, not  
7 all the way down, just letting some fresh air in  
8 while I was driving.

9 Q. Do you recall Sergeant French saying anything  
10 after the vehicle hit that barrier?

11 A. No, I don't.

12 Q. Did you radio anything as part of your, you know,  
13 your commenting or your directioning to say that  
14 the vehicle hit the barrier?

15 A. I recall radioing that we were on the bridge.  
16 And I believe I may have indicated that, you  
17 know, we were westbound, but that's all. I don't  
18 recall radioing anything else at that point.

19 Q. Okay. So this vehicle was now up against the  
20 concrete barrier. Is it parallel to the barrier,  
21 or at an angle to the barrier?

22 A. It's at an angle.

23 Q. Could you give me a degree on the angle?

24 A. I don't want to guess. You know, it appeared

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1           that the -- at least the driver's side front  
2           bumper area, maybe from the center of the hood,  
3           that portion over to the left was at the barrier.  
4           So I'm not exactly sure on a degree.

5       Q.   Now, we have photos that were taken after the  
6           fact, but that vehicle didn't stay against the  
7           barrier; correct?

8       A.   That's correct.

9       Q.   Okay. So when we look at photos they're not  
10          going to be showing where it was in relation to  
11          the barrier at that point; correct?

12      A.   Correct.

13      Q.   Did you ever look at photos from the scene  
14          afterwards?

15      A.   I believe I did.

16      Q.   With who did you look at those photos, or were  
17          you by yourself?

18      A.   I don't recall if it was with one of the evidence  
19          technicians, or if it was at grand jury. I don't  
20          recall.

21      Q.   Did you ever see any videos of the pursuit?

22           MR. ASPLAND: Of the pursuit itself?

23           MR. TORCZYNER: Yes.

24      A.   I have not seen a video of the -- I guess, I'm

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1           sorry --

2           Q.   Did you ever see a video of the pursuit of this  
3           vehicle?

4           A.   Yes.

5           Q.   Who showed you that video?

6           A.   Possibly Sergeant White.

7           Q.   Do you know who took that video?

8           A.   I believe it was a video that was on a building  
9           on 6th Avenue on the corner of -- it would be  
10          just north of Hoosick Street on 6th Avenue.

11          Q.   What do you recall from the video?

12          A.   I recall Sergeant French's vehicle turning onto  
13          Hoosick Street, and my vehicle coming into the  
14          intersection as well and going up Hoosick Street.

15          Q.   Okay. Does the video show Sergeant French  
16          outside of his vehicle?

17          A.   No.

18          Q.   Okay. Are you aware of the video that was taken  
19          -- withdrawn.

20                Have you ever seen a video that was taken  
21          that involved Sergeant French outside of his  
22          vehicle?

23          A.   Yes.

24          Q.   Did you see that video?

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1 A. Yes.

2 Q. Who showed you that video?

3 A. I believe it was Sergeant White, and I believe at  
4 the grand jury.

5 Q. Okay. Who took that video?

6 A. To the best of my knowledge, it was Phil Gross.

7 Q. Did you ever talk to Phil Gross about that video?

8 A. No.

9 Q. Okay. I'm just going to ask you to leave the  
10 room for a moment, please.

11 (An off-the-record discussion was held.)

12 BY MR. TORCZYNER:

13 Q. So we're going to leave discussions about the  
14 video for a bit and come back to it.

15 What happens next after Sergeant French  
16 pulls his vehicle -- withdrawn.

17 Sergeant French pulls his vehicle in front  
18 of the stopped car, which being the Thevenin's  
19 vehicle, about how far ahead of the vehicle is  
20 Sergeant French's vehicle?

21 A. From my vantage point, I would say within five  
22 feet, probably.

23 Q. Okay. Is Sergeant French's vehicle at an angle  
24 to Thevenin's vehicle?

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1 A. Yes.

2 Q. Perpendicular to the barrier?

3 A. Again, it's on an angle. From my vantage point,  
4 I couldn't give you an exact, you know, an, you  
5 know, degree. But I know that at least the  
6 corner of his driver's bumper was, you know,  
7 towards the barrier.

8 Q. And what happened -- what did you do with your  
9 vehicle at that point?

10 A. I pulled in behind the Thevenin vehicle leaving,  
11 you know, a few feet for room in case the car was  
12 to back up.

13 Q. Why would you leave room for it to back up?

14 A. So it wouldn't hit my car.

15 Q. Okay. Is there a specific procedure as far as  
16 how to position your vehicles when dealing with a  
17 vehicle such as the Thevenin vehicle that's hit  
18 the concrete barrier?

19 A. I wouldn't say there was any specific procedure.  
20 You want to try keep it secure, limiting, you  
21 know, any kind of movement of that vehicle such  
22 as that may try to do to move.

23 Q. Did your vehicle have a microphone?

24 A. No.



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- 1 Q. To your knowledge, did Sergeant French's vehicle  
2 have a microphone?
- 3 A. Not to my knowledge, no.
- 4 Q. So what happened next after you pulled your  
5 vehicle in a number of feet behind the Thevenin  
6 vehicle?
- 7 A. I exited my vehicle by the driver door, and I  
8 started to approach the Thevenin vehicle.
- 9 Q. Did you have a service weapon with you?
- 10 A. Yes.
- 11 Q. What kind of weapon did you have?
- 12 A. My duty issued Sig Sauer P220 45 caliber.
- 13 Q. Okay. Now, I know that depending on the police  
14 department, you have a different term for how  
15 that vehicle -- how that weapon is used on your  
16 belt. Was it in a holster, or do you have a  
17 different term for that?
- 18 A. No, it was in my holster.
- 19 Q. So you had not taken the gun out of your holster  
20 at that point?
- 21 A. No.
- 22 Q. Had you -- does that holster have a clip on it,  
23 some of kind of latch that holds it in place?
- 24 A. Yes, it does.

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1 Q. Was the latch unlatched or latched at that point?

2 A. It was latched.

3 Q. At the time that you exited your vehicle, was  
4 Sergeant French in his vehicle, or had he already  
5 exited his vehicle?

6 A. As I had exited my vehicle and started up towards  
7 the Thevenin vehicle I had saw Sergeant French  
8 get out of the driver's door of his patrol  
9 vehicle, exit his vehicle.

10 Q. Okay. The driver's door was on the side facing  
11 the Thevenin vehicle; correct?

12 A. Yes.

13 Q. Did Sergeant French have his service weapon out  
14 of the holster at that point?

15 A. I could not tell from my vantage point.

16 Q. At any point did you see the service weapon in  
17 Sergeant French's hand?

18 A. Yes.

19 Q. How long after you exited your -- withdrawn.

20 How long after Sergeant French exited his  
21 vehicle did you first see the service weapon in  
22 his hand?

23 A. I didn't see the service weapon in his hand until  
24 I had observed that he was pinned between the

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1 vehicle and just basically his upper body laying  
2 on top of the -- of the hood of the Thevenin  
3 vehicle.

4 Q. We'll get to the events at that point.

5 Did you hear any instructions from Sergeant  
6 French to Thevenin at that point when you first  
7 saw Sergeant French outside of his vehicle?

8 A. Yes.

9 Q. What did you hear?

10 A. I could hear Sergeant French yelling, Stop. I  
11 heard that a few times. I could hear something  
12 else, but I couldn't understand what it was  
13 because my vehicle -- when I exited my vehicle I  
14 had my emergency lights and my emergency siren  
15 still activated.

16 Q. So the sirens were actually blaring while the  
17 vehicle was in park?

18 A. Yes.

19 Q. Is that a special setting, or that can happen  
20 anyway; you can leave them toggled on even when  
21 the car's in park?

22 A. When the car's in park, in my particular car,  
23 there's three buttons for the emergency lights.  
24 One -- the first button just, kind of, activates

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1 rear flashing lights. The second button would  
2 activate the rear and front flashing lights as  
3 well as a visor light, which would -- my visor  
4 has a light on it. I pulled that down, a red  
5 light. And the third button would activate the  
6 siren.

7 Q. And that siren had been active since when you  
8 started pursuit and was active after you pulled  
9 your car behind the Thevenin vehicle; correct?

10 A. Yes.

11 Q. The first time that you see -- withdrawn.

12 When you exited your vehicle did you give  
13 Thevenin any instructions?

14 A. No.

15 Q. The first words that you heard from Sergeant  
16 French were, Stop, stop?

17 A. Yes.

18 Q. Something of that nature?

19 A. Something of that nature.

20 Q. At the point that Sergeant French was saying,  
21 Stop, stop, what was the Thevenin vehicle doing?

22 A. The engine sounded like it was revving, like the  
23 accelerator was being pushed and the back tires  
24 were, like, spinning, indicating to me that the

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1 car was trying to come backwards.

2 Q. Well, which way were the tires spinning?

3 A. I didn't look directly at the tires.

4 Q. Well, it could be spinning forward if the  
5 vehicle's trying to go forward, or they could be  
6 spinning backwards if the tires going backwards.

7 Which way was the tires spinning, to your  
8 knowledge?

9 A. I would have to say -- I would say in reverse,  
10 because when I exited my vehicle I started to  
11 approach the Thevenin vehicle. I had started to  
12 approach on the driver's side. The engine was  
13 revving and the tires appeared to be spinning,  
14 and the vehicle came off the wall and came  
15 backwards.

16 MR. TORCZYNER: All right, I mean, I'd like  
17 the officer to -- sorry, the captain to continue  
18 with the testimony.

19 MR. ASPLAND: Sure. She's just the technical  
20 one to set this up. We can look at it whenever  
21 you want.

22 MR. TORCZYNER: Okay. Do you want her to  
23 finish whatever she's doing, and then continue? I  
24 don't want to distract you so that you're talking

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1 to her and the witness doesn't know whether he  
2 should respond.

3 MR. ASPLAND: No, I'm good. Go ahead.

4 Q. Were you still outside of your vehicle at that  
5 point where you heard the tires and saw the  
6 vehicle going backwards?

7 A. Yes.

8 Q. And what did you do in response to that vehicle  
9 moving backwards towards your vehicle?

10 A. I jumped out of the way.

11 Q. Okay. Did the Thevenin vehicle make contact with  
12 any part of your vehicle?

13 A. It did.

14 Q. Which part of the Thevenin vehicle made contact  
15 with your vehicle?

16 A. The rear of the Thevenin vehicle, when it came  
17 back in reverse, struck the front bumper area  
18 grille area of my vehicle.

19 Q. Was it flush or on the side or something else?

20 A. It appeared to be straight on.

21 Q. Was there any damage done to your vehicle?

22 A. Yes.

23 Q. And where was the damage to your vehicle?

24 A. As I recall, some damage to the bumper and the

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1 grille area.

2 Q. Okay. Did the Thevenin vehicle sustain any  
3 damage as a result of this?

4 A. Without looking at a picture, I don't recall at  
5 this point in time.

6 Q. Okay. After the Thevenin made contact with your  
7 vehicle, what did you do next?

8 A. I had turned -- I had jumped out of the way. So  
9 I had -- my body had turned away. I believe I  
10 turned to the left, which would be facing going  
11 south. I turned back around to start to go to  
12 approach the driver's side again of the Thevenin  
13 vehicle, and the car -- the Thevenin vehicle,  
14 then started moving forward.

15 Q. Okay. At this point when the Thevenin vehicle  
16 starts to move forward is your service weapon  
17 still in the holster?

18 A. Yes.

19 Q. Okay. Are you saying any commands?

20 A. I was yelling, Stop, stop.

21 Q. What was Sergeant French doing at that point?

22 A. I could hear Sergeant French yelling something.  
23 I can't make out what it was.

24 Q. What was the distance between you and Sergeant

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1 French at that point, if you can approximate?

2 A. At that point I couldn't see Sergeant French. I  
3 know that he had exited his vehicle and went to  
4 his left, which would be my right. So when he  
5 exited his vehicle he was at the front or the --  
6 kind of the front and the passenger side of the  
7 Thevenin vehicle. And he moved to his left,  
8 which would, I guess, place you more towards the  
9 passenger side of the Thevenin vehicle.

10 Q. So if I'm understanding you correctly, Sergeant  
11 French is on the front passenger side, and you're  
12 more towards the rear driver's side of the  
13 Thevenin vehicle at this point?

14 A. Yes.

15 Q. How tall are you?

16 A. I'm six-foot-three.

17 Q. Were you able to see over the Thevenin vehicle at  
18 this point?

19 A. Actually I was kind of bent down at the waist  
20 like -- almost like kind of ducking in one  
21 respect. So I didn't have a clear view over the  
22 vehicle.

23 Q. Because the Thevenin vehicle is a Honda it  
24 couldn't be more than four feet off the ground;



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1 right?

2 A. Probably.

3 Q. Were the windows tinted on the vehicle?

4 A. On which vehicle?

5 Q. On the Thevenin vehicle, were the windows tinted?

6 A. I don't recall.

7 Q. At any point while you're standing outside of the  
8 vehicle, and the Thevenin vehicle was backing up,  
9 are you able to actually see Edson Thevenin?

10 A. I could see the head of somebody inside the  
11 vehicle.

12 Q. Okay. All right, let's make this easy.

13 Was there more than one person in the  
14 vehicle?

15 A. Not that I saw.

16 Q. Okay. So for our purposes, when we're talking  
17 about Edson Thevenin, can we agree that he's the  
18 person in the vehicle?

19 A. Yes.

20 Q. Okay. At any point, when you are -- when that  
21 vehicle is reversing towards yours, do you see  
22 Edson Thevenin's face?

23 A. No.

24 Q. And when you're now coming up alongside the

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1 driver's side of the vehicle, could you see  
2 Edson Thevenin's face?

3 A. Not at that point.

4 Q. And at that point you couldn't see  
5 Sergeant French because of the position you were  
6 in; correct?

7 A. Correct.

8 Q. Are there specific instructions for how to handle  
9 or deal with a vehicle that's attempting to  
10 reverse and run towards your stopped vehicle?

11 A. Specific instructions?

12 Q. Are you trained in a scenario for what to do when  
13 you're standing outside your vehicle, and the  
14 vehicle that you're pursuing is now backing up  
15 towards your vehicle?

16 A. I mean, basically, just move out of the way. I  
17 mean, if I was in my vehicle I would attempt --  
18 if it was in park, I would attempt to put it in  
19 reverse and back up as far as I could without  
20 causing any, you know, damage or alarm or  
21 anything to anybody that may be behind me and try  
22 to move out of the way so the vehicle would not  
23 strike me or strike my vehicle.

24 Q. At this point when his vehicle is backing up

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1           towards yours and it makes contact with your  
2           vehicle, are there any other patrol vehicles that  
3           are on that bridge other than yours and Sergeant  
4           French's?

5           A.    No.

6           Q.    Okay. So now you're approaching the vehicle  
7           after it -- withdrawn.

8                    The Thevenin vehicle makes contact with your  
9           vehicle. Does it stop at that point, or does it  
10          bounce off it, or what happens?

11          A.    It hit my vehicle, and it was a brief -- seconds,  
12          and then the car proceeded forward.

13          Q.    Okay. When the car proceeded forward was it  
14          going straight or to the side or something else?

15          A.    It appeared to be on an angle.

16          Q.    Did it appear to you that the vehicle was trying  
17          to go around Sergeant French's vehicle?

18          A.    I couldn't tell that from my vantage point.

19          Q.    Okay. Did it appear that it was trying to drive  
20          straight through Sergeant French's vehicle?

21          A.    From where the Thevenin vehicle was positioned  
22          and when he went forward, I didn't think that it  
23          would clear the patrol vehicle.

24          Q.    Okay. Now, sometimes, you know, all of us that

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1 watch movies, you see vehicles that attempt to go  
2 through another vehicle rather than around it.  
3 You've seen that, at least, in Hollywood;  
4 correct?

5 A. Yes.

6 Q. Okay. Did it look like, from your vantage point,  
7 this vehicle that Thevenin was driving was trying  
8 to go through Sergeant French's vehicle, or did  
9 it look like it was trying to go around it, or  
10 something else?

11 MR. ASPLAND: Just note my objection to the  
12 form.

13 A. I can't say.

14 Q. What did it look like to you?

15 A. It looked like the Thevenin vehicle was trying to  
16 get away.

17 Q. And what happened next after the Thevenin vehicle  
18 tried to clear, to use your term,  
19 Sergeant French's vehicle?

20 MR. ASPLAND: Just to be clear, what he said  
21 was, I didn't think it was going to clear the  
22 vehicle. He didn't say he was attempting to clear  
23 the vehicle.

24 MR. TORCZYNER: Okay, fair enough.

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1 Q. To your mind, did it appear that it was trying to  
2 clear that vehicle even though it couldn't?

3 MR. ASPLAND: Just note my objection to the  
4 form.

5 Q. Withdrawn.

6 You said it looked like he was trying to get  
7 away; correct?

8 A. Yes.

9 Q. When the vehicle was trying to get away, what was  
10 your response; what did you do?

11 A. I, at that point, started to make the forward  
12 motion. I turned away and started to go back to  
13 my vehicle because I thought he intended to  
14 pursue the vehicle.

15 Q. Okay. What did Sergeant French do when --  
16 withdrawn.

17 When this vehicle was trying to get away  
18 could you see Sergeant French at that point?

19 A. No.

20 Q. When's the next time you saw Sergeant French  
21 after this vehicle starts to try to get away from  
22 this police stop?

23 A. The next time I saw Sergeant French was, again,  
24 when he was pinned between the vehicle and the

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1 patrol car, and he was -- upper body was laying  
2 on the hood.

3 Q. Okay. How fast would you estimate the speed was  
4 of the Thevenin vehicle when it collided with  
5 your vehicle?

6 MR. ASPLAND: He's not asking you to guess.  
7 What he says is estimate.

8 Q. I don't need you to tell me 17 or 22, but was it  
9 fast, slow, something in between?

10 A. It wasn't at a fast speed. It just backed up,  
11 come off the wall, and backed in.

12 Q. Your vehicle has airbags?

13 A. Yes.

14 Q. Did the airbags deploy as a result of the  
15 collision with the Thevenin vehicle?

16 A. No, I don't believe that the airbag deployed.

17 Q. Now, from life, you've seen bumps and you've seen  
18 collisions and you've seen unfortunately wrecks.  
19 This collision that the Thevenin vehicle made  
20 with your vehicle, would you have called that a  
21 low-speed collision, average rate of speed, high  
22 speed?

23 A. I would consider it a low to average with  
24 considering that the airbag wasn't deployed.

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1 Q. And the damage to your vehicle was to the grille;  
2 is that correct?

3 A. Yes, as I recall, the grille, I believe, was  
4 cracked, and there was something with the bumper,  
5 with the license plate area on there as well.

6 Q. Right. The kind of thing that would probably --  
7 well, withdrawn.

8 I'm not going to speculate on insurance  
9 companies and what they would call it.

10 You had mentioned that the first time that  
11 you observed Sergeant French after the Thevenin  
12 vehicle leaves your vehicle is when he's now made  
13 contact with the hood of the Thevenin vehicle;  
14 correct?

15 A. Yes.

16 Q. At that point is Sergeant French holding his  
17 service weapon?

18 A. Yes.

19 Q. Did you actually see Sergeant French take his  
20 service weapon out of his holster?

21 A. No.

22 Q. Did you hear Sergeant French warn Thevenin that  
23 he was going to use the weapon?

24 A. I heard yelling, but I could not hear exact

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1 words, other than the initial words of, Stop,  
2 stop. And there was some other things he was  
3 yelling, but --

4 Q. Okay. Did you hear the collision between  
5 Sergeant French -- withdrawn.

6 Did you hear the collision between the  
7 Thevenin vehicle and Sergeant French?

8 A. Yes.

9 Q. Okay. Was that a heavy collision, from what you  
10 could hear?

11 MR. ASPLAND: Did the noise reflect the heavy  
12 collision?

13 MR. TORCZYNER: Yeah.

14 A. As compared to, like, a truck hitting a wall or  
15 something?

16 Q. You've heard people get hit by cars before;  
17 right? Or if not, you can tell me no.

18 MR. ASPLAND: Object to the form of the  
19 question.

20 A. I have not seen anybody directly, personally get  
21 hit.

22 Q. Okay. Did you see the vehicle make contact with  
23 Sergeant French's vehicle?

24 A. I heard the contact.



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1 Q. Okay. But did you actually see when the vehicle  
2 first made contact with Sergeant French's  
3 vehicle?

4 A. No.

5 Q. Okay. The first time that you saw the Thevenin  
6 vehicle in contact with Sergeant French's  
7 vehicle, which part of the Thevenin vehicle was  
8 in contact with Sergeant French's vehicle?

9 A. It was the front end.

10 Q. Okay. Was it perpendicular to the Sergeant  
11 French vehicle?

12 A. When I -- during the incident when I looked at it  
13 or looked quickly, everything was happening so  
14 fast that it was, again, on somewhat of an angle  
15 to the patrol vehicle.

16 Q. Which part of Sergeant French's vehicle was  
17 contacted by the Thevenin vehicle?

18 A. It was the driver's side, but I don't recall  
19 exactly what -- if it was the passenger door or  
20 the quarter panel. I don't recall.

21 Q. Was the door, driver's side door, open to  
22 Sergeant French's vehicle at that point?

23 A. I don't recall.

24 Q. Okay. Which part of Sergeant French's vehicle

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1 was he pinned to at the time you saw him?

2 A. It was the driver's side, somewhere between the  
3 driver's door and the back end. Again,  
4 everything was happening so fast. It was just a  
5 quick look and, you know, everything was just,  
6 kind of, evolving so fast that I didn't zero in  
7 on what exact area he was at.

8 Q. Did you hear gunshots that night?

9 A. I did.

10 Q. Did you hear the gunshots before or after you saw  
11 Sergeant French pinned?

12 A. I heard gunshots before I saw Sergeant French  
13 pinned.

14 Q. Okay. Did you hear gunshots again after you saw  
15 him pinned?

16 A. Yes.

17 Q. Did you see Sergeant French firing his weapon?

18 A. No.

19 Q. When you heard gunshots, which way were you  
20 looking?

21 A. Initially, I was looking toward my car, because  
22 the Thevenin vehicle had proceeded in a forward  
23 motion, and I had turned to my vehicle to get  
24 into it, too, which, at that time, I believed

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1 that it was trying to take off, and I'm going to  
2 get pursuit.

3 At that point, when I had turned to start  
4 stepping towards my vehicle, I heard  
5 Sergeant French yelling something. I could not  
6 make it out because I was right near front of my  
7 car with siren blaring. And then I heard a  
8 couple of gunshots. I couldn't tell you exactly  
9 how many.

10 Q. And then after the gunshots you saw  
11 Sergeant French pinned?

12 A. Not right away.

13 Q. What happened after the gunshots; what did you  
14 see next?

15 A. I turned towards the Thevenin vehicle, and I drew  
16 my duty weapon because I did not know where the  
17 gunshots were coming from. I didn't know if it  
18 was the person who's the suspect in the vehicle.  
19 I didn't know if it was Sergeant French. I  
20 started to approach the vehicle with my duty  
21 weapon drawn straight out, pointing towards the  
22 vehicle, pointing towards the driver.

23 Q. Were you still hunched over at that point, or  
24 were you standing?

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1 A. No, I was still hunched over because I didn't  
2 want to make myself a bigger target if the  
3 suspect in the vehicle was shooting. I  
4 approached the vehicle, again, with my duty  
5 weapon pointed at the vehicle, straight -- my arm  
6 was straight out. I was yelling to stop, get out  
7 of the vehicle. As I started to get up to the  
8 door, I heard a couple more gunshots.

9 Q. Was the vehicle moving at that point?

10 A. No.

11 Q. Okay. So you heard these second set of gunshots  
12 after the vehicle was already stopped, the  
13 Thevenin vehicle?

14 A. Yes.

15 Q. Okay. And you said you were approaching the  
16 door. Which door were you approaching?

17 A. I was approaching the driver's door.

18 Q. Okay. So you had already passed -- withdrawn.

19 The Thevenin vehicle was a four-door;  
20 correct?

21 A. As I recall, it was a two-door car.

22 Q. It was a two-door. Okay. So you were now  
23 reaching the driver's door on, obviously, the  
24 driver's side of the vehicle; correct?

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1 A. Correct.

2 Q. Okay. And at that point you hear two more  
3 gunshots?

4 A. That's what I recall.

5 Q. Well, these are all to your best of your  
6 recollection.

7 A. I -- again, at that point in time I didn't know  
8 who was shooting, and I was -- I was in fear of  
9 myself being injured because I didn't know where  
10 the gunshots were fired. So, you know, the  
11 adrenaline's pumping, the heart's, you know,  
12 racing, and you don't whether you're a target or  
13 not.

14 Q. Were you wearing a vest?

15 A. Yes.

16 Q. Okay. So you're approaching the driver's side  
17 door, and you hear a couple more shots. And at  
18 that point had you seen Sergeant French yet, or  
19 you had not seen him yet?

20 A. Just as I approached the door and heard, you  
21 know, a couple more shots, out of the corner of  
22 my eye, I could now see Sergeant French at the  
23 front of the vehicle, because I was still in a  
24 semi-squatting position with my gun drawn

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1 pointing at the driver of the vehicle, at the  
2 Thevenin vehicle.

3 Q. Okay. Did you see any of the gunshots --  
4 withdrawn.

5 Did you see any of the bullets enter the  
6 Thevenin vehicle?

7 A. I did not see bullets come into the vehicle,  
8 although I did see the muzzle flash, and I did  
9 feel the blast of the gun.

10 Q. Were you hit with glass?

11 A. I believe I was.

12 Q. Okay. Did the glass come from the windshield?

13 A. As I looked at the vehicle afterwards and saw  
14 that there was bullet holes in the windshield, I  
15 would say, yes, that's where the glass came from.

16 Q. When did you first feel the glass hitting you?

17 A. When I was up at the driver's door of the  
18 Thevenin vehicle.

19 Q. Okay. This was before or after those second  
20 shots?

21 A. This was after the second shots that I heard.

22 Q. That's when you first felt the glass?

23 A. I felt the blast and the glass, kind of, one  
24 right after the other.

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1 Q. Okay. Did you actually see French fire any of  
2 the shots?

3 A. No.

4 Q. Okay. At what point did you realize that  
5 Thevenin hadn't fired any of the shots?

6 A. I still wasn't sure that he hadn't fired  
7 anything. But once I was at the driver's door  
8 and giving him orders to exit the vehicle, and I  
9 looked and I saw Sergeant French pinned between  
10 the two cars, yelling, I'm pinned, I'm pinned,  
11 get me out, get me out, I saw that he was bent  
12 over the hood, and I could see the gun in his  
13 hand, his gun.

14 Q. "Bent over the hood," meaning, Sergeant French  
15 was bent over the hood; correct?

16 A. Right. Sergeant French was pinned between both  
17 cars, and his body, at that point, was almost  
18 lying on the hood of the Thevenin vehicle.

19 Q. Okay. At that point when you see Sergeant French  
20 on the Thevenin vehicle, on the hood of the  
21 Thevenin vehicle, did you say anything to  
22 Sergeant French?

23 A. I yelled his name twice. I said, Randy, Randy.

24 Q. And did he respond to you?

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1 A. All he said was, Get the car off me. I'm pinned.  
2 I'm pinned. Get the car off me.

3 Q. Did you actually hear the impact that the car  
4 made when it hit Sergeant French?

5 A. I heard a noise, and I saw the car stop.

6 Q. Was that noise from hitting the French vehicle or  
7 from hitting French or you do not know?

8 A. I can't answer that, because I didn't -- Sergeant  
9 French was out of my -- as I stated earlier, was  
10 out of my sight of view, because myself being at  
11 the back of the vehicle and, kind of, being --

12 Q. Did the crash sound like fiberglass on  
13 fiberglass, or metal on fiberglass, or did it  
14 sound like a thud hitting a person?

15 MR. ASPLAND: Or something else.

16 Q. Or something else. Always got to give the third  
17 option.

18 A. I don't know.

19 Q. Okay. So you're yelling, Randy, Randy, and he's  
20 saying, Get this off of me; correct?

21 A. Yes.

22 Q. Did you actually see the Thevenin vehicle hit any  
23 part of Randy's vehicle, or the first time that  
24 you saw it it was already together?



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1 MR. ASPLAND: Could you just read that one  
2 back.

3 (The requested testimony was read back.)

4 A. It was already together when I saw it. I heard a  
5 noise, and I saw, you know, the vehicle appeared  
6 to be against Randy's vehicle with Randy in  
7 between the vehicles.

8 Q. Okay. When we spoke earlier, and you said that  
9 you thought the vehicle was not going to be able  
10 clear Randy's vehicle; you remember giving that  
11 answer?

12 A. Yes.

13 Q. About how fast would you say that that vehicle  
14 was going slow: Slow, medium, quick, something  
15 else?

16 A. I would say slow, because he was just starting to  
17 accelerate.

18 Q. Okay. And you didn't see the speed of the  
19 vehicle when it collided with the French vehicle  
20 because you were in your car?

21 A. I had turned away towards my car.

22 Q. Okay. To your recollection, how much time passed  
23 between the first set of shots and the second set  
24 of shots?

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1 A. It was brief.

2 Q. Okay. What did you do in between the first set  
3 of shots and the second set of shots?

4 A. When I heard the first set, again, that's when I  
5 was facing away, facing towards my vehicle, so  
6 after I heard the first set, that's when I turned  
7 around, drew my duty weapon, and started to go  
8 towards the driver's door of the Thevenin  
9 vehicle. As I got there, I heard a couple more  
10 shots.

11 Q. Were you running or moving average pace or  
12 cautiously moving during that time period?

13 A. I was moving like on a side step, squat, you  
14 know, kind of -- again, like I said, ducking,  
15 squatting with my duty weapon drawn with my arms  
16 straight out and, kind of, side-stepping to the  
17 vehicle.

18 Q. Okay. But was that a slow pace, an average pace,  
19 at a fast pace?

20 A. I would say average. I was trying to cautiously  
21 approach because, again, I didn't know who was  
22 shooting.

23 Q. Right. And then as you approached the vehicle,  
24 that's when you hear the second set of shots?

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1 A. Yes.

2 Q. Okay. After the second set of shots and you say,  
3 Randy, Randy, and he says, Get this off of me,  
4 how much time passes before you actually see  
5 Thevenin in his car?

6 A. At that point in time I'm with my weapon drawn at  
7 Thevenin, I'm yelling at Thevenin to get out of  
8 the vehicle.

9 Q. What did he say?

10 A. He's not responding to me at all. There was no  
11 response.

12 Q. What were you saying?

13 A. I was saying, Get out of the vehicle, get of the  
14 vehicle, show me your hands.

15 Q. And he doesn't respond to you at all?

16 A. No.

17 Q. Is he speaking?

18 A. No.

19 Q. Is he making any sounds at all?

20 A. No.

21 Q. Is he alive?

22 A. I don't know at that point.

23 Q. What do you do next after you issue these  
24 commands to Thevenin and he doesn't respond?

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1 A. I open the driver's door, because Sergeant French  
2 is pinned, and he's yelling to get the car off  
3 him, get the car off him, I'm pinned. I reach in  
4 with my -- I still have my duty weapon drawn in  
5 my right hand and I have it pointed at Thevenin,  
6 I reach in with my left hand and grab him by the  
7 left shoulder area, and I pull him out of the  
8 car.

9 Q. When you pulled him out was he alive?

10 A. I don't know.

11 Q. Okay. Did you see his eyes at that point?

12 A. No.

13 Q. Were you able to physically pull him out of the  
14 vehicle?

15 A. Yes.

16 Q. Did his entire body leave the vehicle?

17 A. Yes.

18 Q. Where does he wind up at this point?

19 A. He winds up on the pavement alongside the  
20 driver's side of his vehicle, outside the  
21 driver's door.

22 Q. At this point, did you still have concerns that  
23 Thevenin might have been the shooter?

24 A. Yes.

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1 Q. Okay.

2 (Cell phone interruption.)

3 (The requested testimony was read back.)

4 Q. After Thevenin is on the ground do you still have  
5 concern that Thevenin might be the shooter?

6 A. Yes.

7 Q. Did you check him for a weapon at that point?

8 A. I saw that I didn't see anything in his hands.  
9 As I got him down to the ground I put my left  
10 knee on his back. Another officer approached  
11 from the back of the Thevenin vehicle, and at  
12 that point I jumped into the driver's seat of the  
13 Thevenin vehicle in an attempt to get that  
14 vehicle off of Sergeant French.

15 Q. Do you see any gunshots on Sergeant French?

16 A. No.

17 Q. Did you see any bullet entries on Sergeant  
18 French?

19 A. Not from where I was standing. I didn't see --  
20 he did not appear to. From what I could see of  
21 him, he did not appear to have a gunshot wound,  
22 that I was aware of.

23 Q. Other than being pinned, did he appear to be  
24 hurt?

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1 A. Being pinned, with him yelling, he appeared to be  
2 -- at least, his lower half being pinned, I would  
3 say that he was injured.

4 Q. Well, he was stuck. Did he appear to be injured?  
5 There's a difference, right, between being  
6 pinned --

7 A. Well, I guess, it's possible you could be pinned  
8 against something and not be injured.

9 Q. To your knowledge, did he break any bones in  
10 this?

11 A. To the best of my knowledge, no.

12 Q. Okay. So let's go back. Did he appear to be  
13 hurt or stuck or both?

14 A. In my opinion?

15 Q. Uh-huh.

16 A. In my opinion, if I was in the same spot, you  
17 know, I would think that I'd have some kind of  
18 injury. And I'm pinned and I can't get out,  
19 especially, you if you have two motor vehicles  
20 that are against each other.

21 Q. Did you ever use your service weapon; have you  
22 ever fired it in the course of duty?

23 A. No.

24 Q. Have you seen an officer shot during a call?

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1 A. No.

2 Q. At this point when you see Sergeant French, did  
3 it appear to you that he was dying? Obviously,  
4 he didn't die, but did he appear to be that  
5 seriously injured?

6 MR. ASPLAND: Note my objection to the form.

7 MR. TORCZYNER: Of course.

8 A. I only could see him from basically the waist up.

9 Q. Okay.

10 A. So I could not tell if he was bleeding below the  
11 waist or not.

12 Q. Was Sergeant French conscious during this whole  
13 time?

14 A. Yes.

15 Q. Was he ever slumped over the hood, or was he just  
16 trapped?

17 A. No, he was slumped onto the hood.

18 Q. Okay. Was his head ever down where he appeared  
19 to be in and out of consciousness?

20 A. No.

21 Q. Okay. So you start to reverse the vehicle. Is  
22 it a stick, or an automatic?

23 A. It's an automatic.

24 Q. And what happens when you put the car into

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1 reverse; does it actually move?

2 A. When I got into the car, the car was in drive,  
3 and I was trying to find the reverse. I was  
4 going back and forth with it a couple of times.

5 Q. What do you mean by "find the reverse"?

6 A. Well, with the -- I'll say that the stress that I  
7 was under at that time, I'm trying to -- worrying  
8 about him, trying to get the car off of him, and  
9 I'm trying to find reverse, it was, you know,  
10 quickly moving the shift back and forth, trying  
11 to get into the reverse gear to try to back it  
12 off of him.

13 Q. Now, since this is a Honda, the stick -- or the  
14 shift, even though it's an automatic, is on the  
15 floor, not on the driving column; correct?

16 A. Right. It's in the -- kind of, the middle there.

17 Q. As this vehicle is -- as you're working the  
18 shift, do you eventually get the car to reverse?

19 A. I think it only moved slightly. I know that  
20 there was -- while I was trying to find the gear  
21 and get it in reverse, an officer showed up and  
22 was at the front of the car. And another  
23 gentleman, who I later learned to be, Phil Gross,  
24 and then another officer came, and they were



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1 pulling on Sergeant French.

2 And I don't actually know if it was them  
3 that got him unwedged and myself getting the car  
4 off, or it was just them, kind of, being able to  
5 move the car a little bit and pull him out.

6 Q. How long does it take to get that car off of  
7 Sergeant French from the moment you jump into the  
8 driver's seat until he's actually disengaged?

9 A. At the time it seemed like forever under the  
10 circumstances, but probably within a minute or  
11 so.

12 Q. Okay. Did you ever learn that Sergeant French's  
13 shoelace or boot lace was caught on the car, on  
14 the Thevenin car?

15 A. I know there was some mention of a boot lace. I  
16 don't remember what the circumstances were, what  
17 that --

18 Q. And where is Thevenin while you're trying to get  
19 the car off of Sergeant French?

20 A. He's on the pavement on the roadway outside the  
21 driver's door on the driver's side of his  
22 vehicle.

23 Q. Now, your knee is no longer on him because you're  
24 sitting in the driver's seat; correct?

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1 A. Correct.

2 Q. Is there anyone who's pinning him to the ground?  
3 "Him," meaning Thevenin.

4 A. There was an officer that had come up -- again,  
5 as I said, when I got up off of him there was an  
6 officer that was right there. At that time I  
7 didn't know who that officer was.

8 Q. Do you know now who that officer was?

9 A. It was Officer Dean.

10 Q. Did Thevenin ever say anything at all during this  
11 time from the moment that you pulled him out of  
12 the car until you got the car off of Sergeant  
13 French?

14 A. He did not say anything to me.

15 Q. Okay. Did he make any purposeful movements? Do  
16 you know what that means when I ask you that?

17 A. If you clarify that.

18 Q. Sure. Did Thevenin make any movements that a  
19 conscious person would make during this time  
20 period?

21 A. I did not see him make any movements towards me  
22 at all once I got him out of the car, put him on  
23 the ground.

24 Q. Did you ever feel Thevenin grab your leg?

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1 A. No.

2 Q. Did you ever see anybody make contact with  
3 Thevenin when he was on the ground?

4 A. No.

5 Q. Did you ever see anybody hit him with a baton?

6 A. No.

7 Q. So together, this person who you now know is  
8 Phil Gross and another officer helped get the car  
9 off of Sergeant French; correct?

10 A. Yes.

11 Q. What happens next after the car gets off Sergeant  
12 French?

13 A. I exited the driver's seat of the Thevenin  
14 vehicle and immediately went around the backside  
15 of the Thevenin vehicle to the front of the  
16 vehicle where they had just pulled Sergeant  
17 French from. An officer pulled up in a patrol  
18 vehicle, and opened -- I opened up -- helped open  
19 up the back door of the patrol vehicle, and  
20 officers put Sergeant French in the backseat of  
21 the patrol vehicle. And I told them to take him  
22 right over to Albany Medical Center.

23 Q. Okay. Did at any point -- withdrawn.

24 Do you have a recollection at any point

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1 during the pursuit or during the collision of  
2 someone radioing for a medic or an EMT or  
3 something of that nature?

4 A. I know I did.

5 Q. When did you make that call?

6 A. I believe right after I got Sergeant French in  
7 the vehicle.

8 Q. So the first time that you called for a medic  
9 Sergeant French is already sitting or lying in  
10 the back of the patrol vehicle?

11 A. As I recall we had just gotten him into the  
12 vehicle.

13 Q. When's the first time that someone's checking on  
14 Thevenin -- withdrawn.

15 I'll ask the question better. When's the  
16 first time someone's looking to see if Thevenin's  
17 still alive?

18 A. I can't answer that.

19 Q. Okay. Did someone check on Thevenin to see if he  
20 was still alive?

21 A. I saw the officer that had come over. Again,  
22 when I had gotten into the vehicle there was an  
23 officer that had come over. As I said, that was  
24 Officer Dean.

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1 Q. Okay. Just for our purposes, now that you know  
2 it's Dean, can we refer to him as Officer Dean  
3 for our conversation?

4 A. Yes.

5 Q. Okay. So you have Sergeant French in his  
6 vehicle, you radio for a medic, and then you see  
7 Officer Dean do what?

8 A. I didn't see Officer Dean do anything. I was on  
9 the passenger side of the vehicle and, quite  
10 frankly, was in a state of shock myself. And I  
11 was actually checking myself to see if I had been  
12 shot.

13 Q. Okay.

14 A. But prior to that I had radioed that we had shots  
15 fired and we needed EMS here at the scene right  
16 away.

17 Q. About how long after Sergeant French winds up in  
18 the vehicle does EMS come to the scene?

19 A. I don't have an exact time. They're just down  
20 the street at Jacob and 6th. So they're  
21 approximately two to three blocks away.

22 Q. Well, that's the distance that they are, not how  
23 long.

24 A. Right. That's where they're located at. As for

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1 an exact amount of time between the time I called  
2 and the time they arrived, I don't know.

3 Q. Do you know if anyone performed CPR on Thevenin?

4 A. I'm not sure -- at what point?

5 Q. I'm just asking: Do you know if anyone ever  
6 performed CPR on Thevenin?

7 A. I do not know that.

8 Q. Do you know if anyone attempted to treat or stop  
9 the bleeding from the gunshots that Thevenin had  
10 sustained?

11 A. I do not know that.

12 Q. After Sergeant French winds up in this patrol  
13 vehicle, what do you do next after -- withdrawn.

14 You said that Sergeant French winds up in  
15 the vehicle, and you're now checking yourself to  
16 make sure that you're not, God forbid, shot as  
17 well; correct?

18 A. Right. I had radioed about the shots being fired  
19 and we needing EMS. And at that point I had told  
20 someone to make sure that he was handcuffed, that  
21 Thevenin was handcuffed. And then I remember  
22 checking myself to see if I had been shot.

23 Q. Okay. And then you realized that you hadn't been  
24 shot; correct?

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- 1 A. Yes.
- 2 Q. Do you ever instruct anyone to remove the
- 3 handcuffs from Thevenin?
- 4 A. When EMS arrived I told them to take the
- 5 handcuffs off so they could treat him.
- 6 Q. At this point is Thevenin moving when EMS shows
- 7 up?
- 8 A. I saw him briefly after they arrived, and I did
- 9 not see him moving. When they arrived, I did not
- 10 see that he was moving.
- 11 Q. Did you watch EMS do any work on Thevenin?
- 12 A. I briefly saw them getting him onto the
- 13 stretcher. But other than that -- I know they
- 14 were bringing him to the ambulance. Other than
- 15 that, I didn't watch, you know, watch any, you
- 16 know, first aid being administered.
- 17 Q. Did you hear EMS make any -- or any of the EMS
- 18 make any observations about Thevenin's condition?
- 19 A. No.
- 20 Q. At any point was there a superior officer that
- 21 was present during this whole event, or were you
- 22 the superior officer on scene?
- 23 A. Chief VanBramer arrived after I had contacted
- 24 him. He responded to the scene.

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1 Q. Okay. Does Chief VanBramer show up before or  
2 after EMS takes away Thevenin?

3 A. I would say it was after Thevenin was taken to  
4 the hospital.

5 Q. So until Thevenin was taken to the hospital, you  
6 are the senior officer that's on the scene;  
7 correct?

8 A. Yes.

9 Q. Did you ever direct any of the officers to attend  
10 to Thevenin before EMS shows up?

11 A. No.

12 MR. TORCZYNER: All right. I think this is a  
13 good place we can take a break.

14 MR. ASPLAND: Sure.

15 (A recess was taken.)

16 (Plaintiffs' Montanino Exhibits 8-11 were marked  
17 for identification.)

18 BY MR. TORCZYNER:

19 Q. I'm going to show you now a photo that's been  
20 marked as Montanino 8. Take a look at it, and  
21 let me know when you're done.

22 A. Okay.

23 Q. Have you seen this photo before?

24 A. Yes.



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1 Q. When did you first see this photo?

2 A. During the -- during the week after the accident,  
3 after the incident.

4 Q. Was that before or after you testified at the  
5 grand jury?

6 A. I believe I saw them before the grand jury.

7 Q. Did you testify about any photos -- withdrawn.

8 As part of your testimony before the grand  
9 jury did you identify photos?

10 A. I don't recall.

11 Q. Okay. Looking at the picture, you see a  
12 dark-colored Honda?

13 A. Yes.

14 Q. Seeing this photo, does that change your  
15 recollection as far as how many doors the car  
16 had, or do you still believe -- it's not a great  
17 picture, but do you still believe that there are  
18 two doors on the car?

19 A. This picture is not clear for me to give that  
20 answer.

21 Q. Obviously Sergeant French is not in this picture;  
22 correct?

23 A. Correct.

24 Q. Okay. So this car had already moved back from

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1 Sergeant French -- withdrawn.

2 The Thevenin vehicle, which is the  
3 dark-colored Honda, had already been moved back  
4 from Sergeant French's vehicle at this point?

5 A. Yes. This is after Sergeant French was removed  
6 from the vehicles.

7 Q. Okay. And the vehicle itself had moved somewhat  
8 from the position that it was in when  
9 Sergeant French was on the hood?

10 A. Yes.

11 Q. Or to your mind, is this still the same position?

12 A. It appears to be in pretty much the same  
13 position. It may have moved slightly. Again, as  
14 I had said, I had gotten in the vehicle and was  
15 trying to move it. I believe I moved it a little  
16 bit, but not much.

17 (An off-the-record discussion was held.)

18 BY MR. TORCZYNER:

19 Q. Okay. The vehicle that's listed as 30, that's  
20 Sergeant French's vehicle?

21 A. Yes.

22 Q. Okay. Let's move on, please, to Montanino 9,  
23 which I'll show you in a moment. Take a look at  
24 this vehicle, and let me know when you're done,

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1           please.

2           A.    Okay.

3           Q.    Have you seen this picture before?

4           A.    I don't recall this picture from this angle.

5           Q.    Do you see your vehicle in this picture?

6           A.    I see a vehicle behind the marked police unit  
7                there looking through the passenger rear window  
8                of the car with a headlight from a vehicle, but  
9                from this vantage point I can't tell whether this  
10               is my vehicle or not.

11          Q.    I'll show you another picture. We'll come back  
12                to this one in a minute, but I'm going to show  
13                you another picture marked Montanino 10.

14                Let me know, please, if the vehicle's that's  
15                approximately eight feet behind the Thevenin  
16                vehicle is your vehicle.

17          A.    Yes, that is.

18          Q.    Okay. And you're certain that that's the vehicle  
19                you were driving?

20          A.    Yes.

21          Q.    Do you see the damage to the Thevenin rear  
22                passenger bumper in this picture?

23          A.    Yes.

24          Q.    Was that the damage as it was after it collided

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1 with your car?

2 A. I can't say that.

3 Q. Who removed your car from the scene?

4 A. I was not present at the scene when my car was  
5 taken away, so I don't know who moved it.

6 Q. Okay. You didn't remove your car from the scene?

7 A. No.

8 Q. How did you leave the scene?

9 A. I was brought down to the police station by  
10 Assistant Chief VanBramer.

11 Q. Was that at your request, his, or something else?

12 A. That was him.

13 Q. Okay. Why were you asked to go with Assistant  
14 Chief VanBramer to the police station?

15 A. He brought me down to the police station in order  
16 to obtain my uniform attire that I was wearing  
17 that night.

18 Q. Was it vouchered for evidence?

19 A. Yes, an evidence technician had collected my  
20 clothes from me.

21 Q. Have you ever seen a picture of yourself at the  
22 scene?

23 A. Not that I recall.

24 Q. You can ask your attorney for them because they

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1 actually were turned over in disclosure. I  
2 didn't need them for this, but they're actually  
3 are pictures of you standing at the scene.

4 A. Okay.

5 Q. All right. Let's go to Montanino Exhibit 11.  
6 It's a fourth picture. Do you see that picture?

7 A. Yes.

8 Q. Okay. In the picture you see what appears to be  
9 the front of the Thevenin vehicle, although it's  
10 not all that clear?

11 A. Yes.

12 Q. And you can see towards the bottom right corner,  
13 the part of the vehicle that had made contact  
14 with the cement wall?

15 A. Yes.

16 Q. Do you see -- the other vehicle that's in this  
17 picture, that was Sergeant Smith -- Sergeant  
18 French's vehicle; correct?

19 A. Yes.

20 Q. Do you see any damage to Sergeant French's  
21 vehicle from when the Thevenin vehicle impacted  
22 it?

23 A. From this picture, it appears to be some damage  
24 on the driver's door. And then from what I can

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1 tell from this picture, maybe on the rear door  
2 there. And I can't -- I think it's just due to  
3 the nature of the picture itself. I'm having a  
4 hard time determining on the -- towards the back  
5 of the vehicle.

6 Q. Yeah. From the picture itself, it could be the  
7 lighting that makes that gray mark by the dial,  
8 is that what you mean, where is says --

9 A. Yes. There, and then on the lower portion of the  
10 rear door, there appears to be -- I don't know if  
11 it's just the light, kind of, like a line almost,  
12 like, going across.

13 Q. And on the front -- on the driver's side door  
14 there's some scraping across the L?

15 A. It appears that way.

16 Q. Did you ever examine Sergeant French's vehicle  
17 after Mr. Thevenin was removed from his car?

18 A. No.

19 Q. Was Vehicle 30 ever put back into service?

20 A. I'm not sure on that. I know it was out of  
21 service for quite some time. I believe they had  
22 sent it to get repaired, but I don't recall if it  
23 had come back into anything or not.

24 Q. Let's go back to Picture 9, please.

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1 Do you see any damage to Vehicle 30 in this  
2 picture?

3 A. From this view of the passenger side of Vehicle  
4 30, no.

5 Q. Okay. Let's go, please, to the picture that's  
6 11. It's the last one that you looked at before.

7 Other than the scraping in the gray area on  
8 the door and on the rear quarter panel, do you  
9 see any damage to the vehicle?

10 MR. ASPLAND: Note my objection.

11 MR. TORCZYNER: So noted.

12 A. Again, just from what I can see, the picture, to  
13 me, isn't -- the lighting and stuff is a little  
14 difficult. But other than what we discussed with  
15 the scraping and up near the dial and stuff, no.

16 Q. So why would this vehicle, to your knowledge,  
17 have been taken out of service for repairs?

18 A. I'm not a mechanic. So Number 1, it wouldn't be  
19 my determination as to --

20 Q. Understood. You were never in fleet service. I  
21 got it.

22 A. -- being taken out. But, generally speaking,  
23 anytime a vehicle that we have is in an accident,  
24 it's usually taken out of service and examined

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1 by, I believe, it would be our police mechanic  
2 and et cetera, to see the operability of it.

3 Q. Let's get back to talking for a minute about your  
4 observations when Sergeant French was on the  
5 hood.

6 You testified about having reviewed certain  
7 policies before you came here testify to today,  
8 including use of deadly physical force?

9 A. Yes.

10 Q. When an officer is pinned between vehicles, would  
11 that be an appropriate time to use deadly  
12 physical force?

13 A. Depending on the circumstances, I would say yes.

14 Q. Which circumstances would justify it?

15 A. Well --

16 MR. ASPLAND: You're asking him in a  
17 hypothetical?

18 MR. TORCZYNER: Yes. Having reviewed the  
19 policy, yes.

20 A. Hypothetically, in reference to Sergeant French's  
21 incident?

22 MR. ASPLAND: He's not asking about this  
23 incident. He's asking about hypothetically.  
24 Pursuant to the policy in a hypothetical, he's not



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1 asking about Randy French's situation right now.

2 THE WITNESS: Okay.

3 Q. Do you understand the question?

4 A. If you could repeat it.

5 Q. Sure. If an officer is pinned between vehicles,  
6 would that justify the use of deadly physical  
7 force?

8 A. If the operator of the vehicle that has the  
9 officer pinned against another car is trying get  
10 away or is accelerating and has the officer  
11 pinned and that person's not, you know, backing  
12 off the officer or anything, I would say that  
13 that would justify the use of deadly physical  
14 force.

15 Q. Now, if the person is trying to get away but not  
16 trying to pin the officer -- or part of the  
17 answer that you gave, if the person's trying to  
18 get away, would justify the use of deadly  
19 physical force?

20 A. I would say if the person was trying to run the  
21 officer over in an instance, I would say, yes,  
22 that would justify the use of deadly physical  
23 force.

24 Q. Okay. Is there an instruction that if a car is

MATTHEW MONTANINO - 07/27/17

1 attempting to flee, that officers should not use  
2 deadly physical force?

3 A. Yes, that's in the general -- or about not firing  
4 at a moving vehicle unless circumstances dictate  
5 otherwise as the policy is a guideline for the  
6 use of force. And, obviously, guidelines are  
7 there to help guide you, but there may be  
8 circumstances outside of that that dictate that  
9 you need to something else outside the line.

10 Q. Let's go back to the response to resistance  
11 reports that we were talking about before.

12 Is there anything in the Albany Police  
13 manual that would excuse Sergeant French from  
14 filling out one of those reports, the response to  
15 resistance report?

16 A. I don't know about the Albany manual. Troy  
17 Police has a different manual, I would assume.

18 Q. Thank you. Is there anything within the Troy  
19 Police Department manual that would excuse  
20 Sergeant French from filling out the response to  
21 resistance report?

22 A. If he was injured at the time and unable to  
23 complete the report directly at that time, then  
24 he would be excused from completing that until he

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1 was able to.

2 Q. But at some point in the future he,  
3 theoretically, would have to fill that out?

4 A. That's correct.

5 Q. Let's go back to the Dean response to resistance  
6 report. I'm not certain the number, but I know  
7 it's before you. This is Number 7. If you could  
8 take a look at it, please.

9 You see the page that's marked 320 on the  
10 bottom?

11 A. Yes, page 320 -- 320. I'm sorry.

12 Q. Okay. You see that it indicates that a baton was  
13 used in a forehand strike?

14 A. Yes.

15 Q. Okay. And it's your signature that's on page  
16 322, the back page; correct?

17 A. Yes.

18 Q. Okay. Were you aware that Officer Dean struck  
19 Thevenin with a baton with a forehand strike?

20 A. No.

21 Q. Turn to page 321, please. Can you please read  
22 out loud the paragraph beginning "in reference."

23 A. "In reference to the above subject, when I got to  
24 the driver's side of the suspect's vehicle, he

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1 was lying facedown on the ground with both arms  
2 moving. He was grabbing at Captain Montanino's  
3 leg. I told him not to move, and he continued to  
4 grab at Captain Montanino. I used my collapsible  
5 baton to strike the subject in the upper body one  
6 time and told him, again, not to move. Both of  
7 his hands dropped to the ground immediately."

8 Q. Okay. Do you recall being grabbed by  
9 Edson Thevenin?

10 A. No.

11 Q. Is this report inaccurate?

12 A. I can't answer for what Officer Dean saw.

13 Q. But you don't recall being grabbed by Thevenin;  
14 correct?

15 A. No.

16 Q. Okay. Let's put this on the stack, please.

17 Did you ever examine the windshield of  
18 Thevenin's car after the shots?

19 A. No.

20 MR. TORCZYNER: Off the record.

21 (An off-the-record discussion was held.)

22 BY MR. TORCZYNER:

23 Q. Can you turn to the second page of the incident  
24 report, which is marked as Exhibit 1.

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1 Do you see the narrative that's handwritten  
2 there?

3 A. Yes.

4 Q. Did you handwrite this?

5 A. I did.

6 Q. Okay. On the third line from the bottom in the  
7 narrative you see that there's a sentence that  
8 begins after a period with an "S" with a circle  
9 around it?

10 A. Yes.

11 Q. Okay. This is your handwriting; correct?

12 A. It is.

13 Q. The "S" with the circle means "subject"; right?

14 A. "S" means "suspect."

15 Q. Or suspect. Fair enough. Can you please read  
16 out loud that sentence.

17 A. Yes. "S was ordered to stop and get out of his  
18 vehicle."

19 Q. And the next sentence, please.

20 A. "Gunshots were fired."

21 Q. And then after that, please.

22 A. "Both S and Sergeant French were transported to  
23 hospitals."

24 Q. Did you hear the subject being ordered, or

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1 suspect ordered to get out of his vehicle?

2 A. I ordered him to get out of his vehicle.

3 Q. And after you ordered him to get out of his  
4 vehicle, that's when the gunshots were fired?

5 A. No, the gunshots were already fired.

6 Q. So this is inaccurate?

7 A. No, these were all orders that were  
8 simultaneously being shouted. Again, I know I  
9 shouted these. I know Officer French was  
10 shouting things. Again, as I said before, I  
11 could hear him yelling, Stop, stop. And he was  
12 yelling some other things, but I could not hear  
13 what he was yelling.

14 Q. Okay. This indicates "subject vehicle backed up  
15 and struck RO," which would be you, responding  
16 officer?

17 A. Reporting officer, yes, unmarked patrol vehicle.

18 Q. Reporting officer. I'm sorry. "Unmarked patrol  
19 vehicle and drove forward pinning Sergeant  
20 French," -- what's that next word, between?

21 A. Between his patrol vehicle and suspect vehicle.

22 Q. And suspect vehicle. And then afterwards it says  
23 "suspect was ordered to stop and get out of his  
24 vehicle." Is that correct that he was ordered to

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1 stop and get out of his vehicle after Sergeant  
2 French was pinned?

3 A. Yes, after Sergeant French was pinned I was  
4 yelling those orders, again, as I said earlier,  
5 as I was approaching the driver's door and at the  
6 door.

7 Q. And at that point the gunshots were fired after  
8 Sergeant French was already pinned?

9 A. The initial gunshots that I heard. I do not know  
10 if Sergeant French was pinned. The second, I  
11 guess, you would maybe classify it as second  
12 round or second set of shots that I heard, at  
13 that time, I knew Sergeant French was pinned.

14 Q. Now, the first set of shots aren't mentioned in  
15 this narrative; correct?

16 A. Just a moment to look back on page --

17 Q. By all means, please.

18 A. No, there's mention here, just a generalization  
19 that shots were fired. There's mention of --  
20 hearing in the report of a -- like, a first round  
21 and a second round.

22 Q. Right. But your recollection was there was a set  
23 of shots, then there's the impact, and then a  
24 second volley of shots; correct?

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1 A. My recollection is that there was -- there was  
2 impact, there was shots, and then there was shots  
3 again.

4 Q. So all the shots were after the impact?

5 A. The car -- as I stated earlier, I observed the  
6 car move forward, and I heard yelling, Sergeant  
7 French shouting. I heard him say, "stop," but I  
8 could not -- as I stated earlier, I could not  
9 understand everything that he was saying. The  
10 car went forward.

11 I know that I heard a couple of shots, and  
12 then I -- again, like I said, I was facing my car  
13 when I heard the first initial shots. And then I  
14 turned and started approaching the vehicle. And  
15 I heard another set of shots and I felt, as I  
16 said earlier, I felt the -- I saw a muzzle flash  
17 and felt the --

18 Q. Heat?

19 A. Heat, the blast from it, and then glass hitting  
20 me.

21 Q. These second set of shots were after the impact  
22 with Sergeant French; correct?

23 MR. ASPLAND: I think the way you're asking  
24 the question might be a little confusing. After



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1 he heard, right, because you established he didn't  
2 see the actual impact.

3 Q. Right. After you heard the impact with Sergeant  
4 French, that's when these second shots were  
5 fired; correct?

6 A. Yes. I heard shot after that, yes.

7 Q. Right. So shots, impact, shots, as far as the  
8 sequence? I'm not saying, you know, without  
9 anything in between, but that was the sequence?

10 MR. TORCZYNER: I'm not -- I'm not trying to  
11 interrupt you here, but that's not exactly how he  
12 testified. I think it's a characterization that  
13 you've made of his testimony.

14 Q. Okay. Were there a set of shots before the  
15 impact?

16 A. Everything kind of -- that initial -- everything  
17 kind of happened simultaneously when the car went  
18 forward, and I turned away. And at that point in  
19 time Sergeant French may have been hit, I did  
20 hear shots. So I don't know if -- I guess,  
21 I'm --

22 Q. You don't know if the first set of shots were  
23 before or after the impact; is that what you're  
24 saying?

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1 A. Yes, because I turned away at that initial time  
2 when I heard the first shots. Again, I saw the  
3 car going forward and I turned away to face my  
4 car to go back towards my car to get into the  
5 car, and I heard the shots. And I heard -- I  
6 heard a noise.

7 And, again, then I turned around and started  
8 approaching the car after I had drawn my duty  
9 weapon. And I was approaching and was just about  
10 up near the driver's window, again, there was  
11 some more shots at that point.

12 Q. Okay. So let's go now to Exhibit 2, which is the  
13 typewritten deposition.

14 A. Okay.

15 Q. Okay. Towards the bottom of the page that's  
16 marked 118, which I believe is the second page of  
17 what you're holding.

18 See where it says, "I continue to approach  
19 on foot"?

20 A. Yes.

21 Q. Okay. Can you read out loud that sentence.

22 A. "I continued to approach on foot, and as I  
23 reached to the driver's side of the black Honda,  
24 the vehicle accelerated forward towards

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1 Sergeant French."

2 Q. Can you read the next sentence, please.

3 A. "I continued my approach alongside the black  
4 Honda, and I heard gunshots."

5 Q. Now, in this narrative -- and I realize this is  
6 18 months ago, but this narrative you were not  
7 going back toward your car as you continued your  
8 approach and heard the gunshots; is that correct?

9 A. Yes. As I read here, having done this deposition  
10 the morning of the incident, and then after  
11 having had a couple of days to calm and think  
12 more and things started to come back to memory  
13 obviously, I'm sure you're aware, traumatic  
14 experience your memory -- there's been statistics  
15 on it with police officers, that you'll remember  
16 more afterwards and have a clearer understanding  
17 of what transpired during the incident.

18 And as I read this now, this is -- both are,  
19 you know, what I said and what I perceived at  
20 that time and, you know, is the truth.

21 Q. But your recollection now is just more accurate  
22 because there's been more time that's passed?

23 A. Yes, there was a couple of days that had passed  
24 between the time I gave this deposition on the

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1 morning of Sunday, April 17th, 2016, as compared  
2 to when I wrote out my vehicle pursuit report on  
3 the -- I started on the 19th of April 2016.

4 Q. So the document that's Exhibit 1 was written  
5 after the Exhibit 2, the incident report was  
6 written after the deposition?

7 A. Correct.

8 Q. Okay. Towards the bottom of 118, "I did not know  
9 who was firing the gunshots at that time."  
10 Right. You see that sentence?

11 A. Yes.

12 Q. "Then I drew my duty pistol and pointed it at the  
13 operator of the black Honda."

14 A. Yes.

15 Q. At that point were there any more gunshots, or  
16 the gunshots had all finished at that point?

17 A. The gunshots were finished at that point.

18 Q. Let's go, please, to Exhibit 3. Okay.

19 Was this document prepared before or after  
20 the incident report?

21 A. This was prepared after the incident report.  
22 When I came into work that night on the 19th I  
23 had prepared the incident report first, and then  
24 I had completed my 120, TPD 120, with Montanino.

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1 3.

2 Q. This supplemental report that was prepared, why  
3 did you prepare it, which is Exhibit 3?

4 A. In our pursuit policy, anytime that any officer  
5 that's involved with the pursuit, if you're not  
6 the initiating officer, you have to complete a  
7 TPD 120 detailing your involvement in the  
8 pursuit.

9 Q. Okay. Did anyone assist you in preparing this  
10 TPD 120?

11 A. No.

12 Q. Okay. Could you please read out loud the  
13 next-to-last paragraph on page 353.

14 A. "At the time of the attempt to stop."

15 Q. That's the last paragraph. The next-to-last  
16 paragraph, please.

17 MR. ASPLAND: "RO exited."

18 A. I'm sorry. "RO exited vehicle to approach  
19 suspect vehicle, and suspect vehicle was  
20 accelerating and backed up and struck the front  
21 of RO vehicle. The suspect vehicle then went  
22 forward and in an attempt to flee. The suspect  
23 vehicle then went forward and pinned Sergeant  
24 French between his patrol vehicle and the suspect

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1 vehicle. RO had ordered the operator of the  
2 vehicle to stop numerous times. The driver's  
3 window was down at the time as well."

4 Q. Okay. Why did you indicate that the driver's  
5 window was down?

6 A. Observation that I made that he should have been  
7 able to hear me.

8 Q. But you weren't able to hear what Sergeant French  
9 was saying because of the sirens; correct?

10 A. Correct. Because I was standing -- well, I was  
11 at the back of my vehicle at the time. Closer to  
12 my vehicle where it was louder.

13 Q. Did you actually see the impact where Sergeant  
14 French was pinned, or you only saw it after the  
15 fact?

16 MR. ASPLAND: That's been, kind of, covered.

17 Q. Okay. Let's confirm. You didn't actually see  
18 the contact where he was pinned, you only saw it  
19 after the fact; correct?

20 A. Yes.

21 Q. Okay. Let's go to the last page, which is your  
22 response to resistance report, please.

23 And that's 323 at the bottom; correct?

24 A. Yes.

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1 Q. Please take a look at it, and let me know when  
2 you're done.

3 A. Okay.

4 Q. Please turn to page 326.

5 A. Okay.

6 Q. Now, you see the very last sentence says, "RO had  
7 an officer handcuff the subject"?

8 A. Yes.

9 Q. Why did you have Thevenin handcuffed?

10 A. Anytime there's an officer-involved shooting and  
11 you have the subject there and down, we handcuff  
12 them. I don't know at that time, again, it's  
13 possible that he could have been shooting.

14 Q. So the reason he was handcuffed because you were  
15 concerned that he was shooting as well?

16 A. Correct.

17 Q. When you entered the vehicle to remove him from  
18 the vehicle, did you search him for a gun?

19 A. I did not.

20 Q. Were you concerned that he could have shot you  
21 while you were getting him out of the car?

22 A. It's a possibility, but he wasn't moving.

23 Q. I'm just asking: Did you have a concern in your  
24 head that Thevenin might shoot you as you were

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1 pulling him out of the vehicle?

2 A. Yes, there was always that possibility that I  
3 felt that if he had a gun, you know, he could  
4 have had it in his right hand that I didn't see.

5 Q. But you didn't check his hands, you just got him  
6 out of the vehicle; correct?

7 A. When I pulled him out of the vehicle, I used my  
8 left hand, and I grabbed his left shoulder area,  
9 I had seen that there was no gun in his left  
10 hand. And as I pulled him out and took him down  
11 on the ground, I didn't observe any gun in his  
12 right hand either.

13 Q. So if there was no gun in either hand, why did he  
14 need to be handcuffed?

15 A. It's standard procedure. Plus, I didn't know if  
16 he might have had a weapon in his waistband at  
17 all either, that he could have reached in for.  
18 So until we're sure, we always handcuff people.

19 Q. Okay. Now, it ends that when TFD, which I assume  
20 is Troy Fire Department; would that be accurate?

21 A. Yes.

22 Q. "EMS," I don't have to explain that one, "arrived  
23 to treat the subject. RO had the officer remove  
24 the handcuffs from the subject."



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1 A. Yes.

2 Q. At that point, when the Troy Fire Department  
3 arrived, did you still have a concern that the --  
4 that Thevenin had a weapon?

5 A. I did not because there was already an officer  
6 that had been with him -- or, actually, I believe  
7 there was a second officer that had already been  
8 with him, so I had relied upon them to have  
9 checked him for a weapon.

10 Q. Do you know if anyone checked him for a weapon?

11 A. I don't.

12 Q. I believe that one of the officers in his  
13 narrative says that there was too much blood so  
14 he didn't want to touch him to see what he had.

15 Did you direct any officer at any point  
16 during the time period after Thevenin was removed  
17 from the car to check him medically?

18 A. No.

19 MR. TORCZYNER: I thank you for coming down  
20 today. I don't have anything further to ask of  
21 you, and I appreciate that you did come down after  
22 finishing shift this morning. If you have any  
23 answers that you've given, we talked before, that  
24 you might want to change something if you realize

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1           that down the road, and I said you'd have that  
2           opportunity, if there's an answer that you'd  
3           previously gave that you'd like to change, by all  
4           means. Otherwise, we'll deem this deposition to  
5           be completed.

6           THE WITNESS: I think the only thing was back  
7           when we were talking at the very beginning, when  
8           we were talking in reference to, I believe, the  
9           shifts, we called the midnight shift "midnights."  
10          It's technically called "first platoon." I think  
11          that was -- that was my little brain stumble  
12          there. The day shift, that's 7:30 to 3:30 or 8 to  
13          4, is called the "second platoon." And then the  
14          afternoon shift, the 3:30 to 11:30 or 8 to 12,  
15          would be considered the "third platoon."

16          MR. TORCZYNER: Great. Thank you very much  
17          for coming down.

18          THE WITNESS: Thank you.

19          (Whereupon, the examination of  
20          MATTHEW MONTANINO, in the above-entitled  
21          matter was concluded at 3:01 p.m.)  
22  
23  
24

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(EXHIBITS RETAINED BY NEIL TORCZYNER, ESQ.)

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1 STATE OF NEW YORK )  
2 ) ss:  
3 COUNTY OF )  
4

5 I, MATTHEW MONTANINO, have read the foregoing  
6 record of my testimony taken at the time and place noted  
7 in the heading hereof, and I do hereby acknowledge it to  
8 be a true and accurate transcript of same.  
9  
10  
11  
12

13 Matthew Montanino /s  
14 MATTHEW MONTANINO  
15  
16

17 DATED: 10/18/17  
18

19 Sworn to before me this 18  
20 day of October, 2017  
21

22 Lynn McGinnis /s  
23 Notary Public  
24

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## C E R T I F I C A T I O N

I, MICHELE AMBROSINO, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby CERTIFY that prior to being examined, the witness named in the foregoing deposition was duly sworn to testify the truth, the whole truth and nothing but the truth.

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced by me to typewritten form and that the same is a true, correct and complete transcription of said proceedings.

Before completion of the deposition, review of the transcript was requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not interested in the outcome of this matter.

---

MICHELE AMBROSINO  
Court Reporter

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Volume II Montanino Continued Deposition is not referenced in the Motion and is marked Confidential/Scaled therefore will not be included with these papers

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT COURT OF NEW YORK

3 -----  
4 CINTHIA THEVENIN, individually, and as wife of  
5 EDSON THEVENIN, Decedent, and as Administratrix of  
6 the Estate of EDSON THEVENIN, and as mother and  
7 natural guardian of Infant N.T. and as mother and  
8 natural guardian of Infant Z.T.,  
9 Plaintiffs,

10 -against-

Index No.  
16-CV-1115 (NAM/DJS)

11 THE CITY OF TROY and SERGEANT RANDALL FRENCH,

12 Defendants.  
13 -----

14 STENOGRAPHIC MINUTES OF DEPOSITION conducted of  
15 DAVID DEAN, pursuant to Agreement, on the 14th day of  
16 August, 2017, at the law offices of Fitzgerald Morris  
17 Baker Firth, 16 Pearl Street, P.O. Box 2017, Glens Falls,  
18 New York, commencing at 9:58 a.m.; before MICHELE  
19 AMBROSINO, a Shorthand Reporter and Notary Public within  
20 and for the State of New York.  
21  
22  
23  
24

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20  
21  
22  
23  
24

1 IT IS HEREBY STIPULATED AND AGREED by and  
2 between the attorneys for the respective parties herein,  
3 that filing and sealing be and the same are hereby  
4 waived.

5  
6  
7 IT IS FURTHER STIPULATED AND AGREED that all  
8 objections, except as to the form of the question, shall  
9 be reserved to the time of the trial.

10  
11  
12 IT IS FURTHER STIPULATED AND AGREED that the  
13 within deposition may be signed and sworn to before any  
14 officer authorized to administer an oath, with the same  
15 force and effect as if signed and sworn to before the  
16 Court.

1                   DAVID DEAN,

2                   (first duly sworn by the Notary Public,  
3                   was examined and testified as follows:)

4                   BY MR. TORCZYNER: Before we start, by  
5                   agreement of counsel, we're not seeking Officer Dean's  
6                   home address. We don't need your home address. When you  
7                   give your address, please give the address of the police  
8                   department. Should you leave the employ of the Troy  
9                   Police Department, at that point we would ask for your  
10                  last known address so that we could serve if we needed to  
11                  bring you in to testify at trial. But other than that,  
12                  as long you stay employed by the City of Troy, we don't  
13                  need your home address or personal information in this  
14                  record.

15                  So stipulated?

16                  MR. ASPLAND: Yes.

17                  MR. TORCZYNER: Thank you.

18                  EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

19                  BY MR. TORCZYNER:

20                  Q. Good morning.

21                  A. Good morning.

22                  Q. My name is Neil Torczyner. I'm an attorney with  
23                  the firm of Harfenist Kraut & Perlstein. We  
24                  represent, along with Hach & Rose, the plaintiffs

—DAVID DEAN - 08/14/17—

1 in a lawsuit against the City of Troy and  
2 Sergeant Randall French.

3 I'm going to be asking you some questions  
4 this morning. It's important that you keep your  
5 voice up, as the young lady seated to your  
6 immediate left cannot take down shrugs of the  
7 shoulders or nods of the head, and needs to be  
8 able to hear all of your answers, so please keep  
9 them verbal.

10 If at any point you don't understand the  
11 question that I'm asking you, let me know,  
12 because we're going to assume that the question  
13 was understood and the answer that you gave  
14 accurately answered that question.

15 So again, if you don't understand, just let  
16 one of us know. As you know, John's seated to  
17 your right. He's the attorney representing the  
18 defendants. If at any time point you'd like to  
19 speak to him, feel free to do so, except while  
20 there's a question pending. If you need a break,  
21 go to the bathroom, get another bottle of water,  
22 or answer a phone from your wife, whatever it is,  
23 just let us know. Of course, we'll accommodate,  
24 just not while there's a question pending.

DAVID DEAN - 08/14/17

1 Do you understand those instructions as I've  
2 given them to you?

3 A. Yes.

4 Q. Are you under the influence of anything that  
5 would prevent you from understanding the  
6 questions I'm asking and giving answers to those  
7 questions?

8 A. No.

9 Q. Have you testified before in any capacity?

10 A. Yes.

11 Q. Have you testified in court?

12 A. Yes.

13 Q. In civil matters or criminal matters or both?

14 A. Criminal, and I have had a previous deposition  
15 for civil.

16 Q. Okay. So you've had a deposition, which was  
17 where I was going beyond court.

18 Were you a party to that lawsuit?

19 A. Yes.

20 Q. Was that within in your capacity as an employee  
21 in the City of Troy?

22 A. No.

23 Q. Was that in any capacity as a police officer?

24 A. No.

—DAVID DEAN - 08/14/17—

1 Q. We don't want any information on that then.

2 Did you review any documents before you came  
3 here to testify today?

4 A. No.

5 Q. Other than conversations with learned counsel,  
6 have you had conversations with anyone prior to  
7 testifying today about your testimony?

8 A. No.

9 Q. Are you aware that Randy French has testified  
10 already?

11 A. Yes.

12 Q. How are you aware that Randy French has  
13 testified?

14 A. Captain Montanino had mentioned when himself and  
15 Randy had testified, that it was a very long  
16 time.

17 Q. I'll let you know that you're not going to be  
18 testifying as long as either Randy --

19 A. I hope so.

20 Q. -- or Sergeant Montanino.

21 A. That would be nice. Thank you.

22 Q. I can't tell you that you're going to be done in  
23 five minutes, but you're certainly not going to  
24 be five hours.



DAVID DEAN - 08/14/17

1 Are you aware of anything about the  
2 testimony given by Sergeant Montanino and/or  
3 Randy French?

4 A. No.

5 Q. You have a duty officer that knows you're here to  
6 testify; right?

7 A. No. Not necessarily, no.

8 Q. Were you assigned by someone from the police  
9 department to come here?

10 A. No, I got an email from --

11 Q. Counsel?

12 A. Yes, their office. I don't need to run it by  
13 anybody.

14 Q. I guess it just depends on the police department  
15 that you're with. Most of them have personnel  
16 that it has to be run by them.

17 A. I believe that the assistant chief was CC'd on  
18 the email. But as far as me having to make a  
19 notification, I do not.

20 Q. I'm not going to ask for production of the email.  
21 We'll just leave that between you and John.

22 Are you currently employed?

23 A. Yes.

24 Q. And who are you employed by?

—DAVID DEAN - 08/14/17—

1 A. City of Troy Police Department.

2 Q. And how long have you been employed by the City  
3 of Troy Police Department?

4 A. About nine years.

5 Q. Did you have to take a civil service test before  
6 you joined the City of Troy Police Department?

7 A. Yes.

8 Q. How many times did you take that test?

9 A. I took it twice, but I got hired off the first  
10 one.

11 Q. It was just that you were waiting for your turn  
12 on the list?

13 A. There was a lapse, yes. They gave the new test  
14 before the old test had expired.

15 Q. What's your current title?

16 A. Patrolman.

17 Q. Have you had any other titles within your employ  
18 with the City of Troy Police Department?

19 A. No.

20 Q. Were you ever a member of any other public safety  
21 agency prior to joining the City of Troy Police  
22 Department?

23 A. As far as police officer, no.

24 Q. Did you have some other public safety work?

DAVID DEAN - 08/14/17

1 A. I worked public safety for Russell Sage College.

2 Q. Are you allowed to carry a firearm as part of  
3 that job?

4 A. Yes.

5 Q. Did you join Russell Sage College before or after  
6 you became employed by the City of Troy?

7 A. After.

8 Q. Did you have to go through Zone 5 as part of your  
9 training with the City of Troy?

10 A. I did.

11 Q. What time period did you do the Zone 5?

12 A. I believe I was hired July 15th of 2007, I  
13 believe, and it's 26 weeks from that.

14 Q. Over the first 26 weeks that's when you did your  
15 Zone 5?

16 A. First 26 weeks, yes.

17 Q. Do you have any certifications in relation to  
18 your job with the Troy Police Department?

19 A. Yes.

20 Q. What certification do you hold?

21 A. Several. There's field training officer. I am  
22 certified for drug testing, field sobriety tests.  
23 There's several. I'm sure there's a bunch I'm  
24 missing.

DAVID DEAN - 08/14/17

1 Q. Have you taken CPR?

2 A. I did in the academy, and I have once since then  
3 about maybe a year-and-a-half ago. Maybe not  
4 quite that long. Maybe a year.

5 Q. Certifications in radar?

6 A. Yes.

7 Q. Any other certifications that you can think of?

8 A. Nothing that springs to my mind currently,  
9 although I'm sure there are more.

10 Q. If I were to talk about the date April 17th,  
11 2016, and I were to mention Edson Thevenin, would  
12 you know what happened on that date involving  
13 Edson Thevenin?

14 A. Yes.

15 Q. So if we speak generally about April 17th, 2016,  
16 you will know what I'm speaking of; correct?

17 A. Yes.

18 Q. Were you working for the City of Troy Police  
19 Department on duty on April 17th, 2016?

20 A. Yes.

21 Q. And which shift did you work that day?

22 A. The midnight shift from 11:30 p.m. to 7:30 a.m.

23 Q. So you were one of the early people --

24 A. Yes.

DAVID DEAN - 08/14/17

1 Q. -- as opposed to the lates that come on at  
2 midnight?

3 A. Correct.

4 Q. And that midnight shift has a nickname, first  
5 platoon, something of that nature?

6 A. Yes. First platoon, yes.

7 Q. For how long had you been working that midnight  
8 shift prior to April of 2016?

9 A. My entire career I've been on midnights.

10 Q. So since you started with the police department  
11 nine, ten years ago you've been on the first  
12 platoon?

13 A. With the exception of field training where I  
14 moved from shift to shift, yes.

15 Q. On April 17th, 2016, do you remember going to  
16 roll call?

17 A. Not specifically, no.

18 Q. Do you remember who were the superior officers  
19 who were actually on duty on April 17th, 2016?

20 A. I know that Sergeant French was my direct  
21 supervisor. Beyond that, no.

22 Q. You mentioned Captain Montanino. Do you remember  
23 him being on duty that night?

24 A. Yes. Yes, I do.

—DAVID DEAN - 08/14/17—

1 Q. So he would have been Sergeant French's direct  
2 supervisor as well; correct?

3 A. Yes.

4 Q. Did you have any officers that were training  
5 under you as a field training officer on the  
6 night of April 17th, 2016?

7 A. No.

8 Q. Do you remember which car you were assigned to  
9 that night?

10 A. I believe 62, Vehicle 62.

11 Q. Were you riding alone, or was there somebody  
12 riding with you?

13 A. Alone.

14 Q. When did you become a field training officer?

15 A. I'd say three to four years ago.

16 Q. That April 17th, 2016, if I were to mention a  
17 rotation of ons-and-offs, do you know where that  
18 sat in your schedule of on-and-off days?

19 A. No, I would have look at a schedule.

20 Q. Do you actually have something at home that would  
21 give that schedule?

22 A. I actually keep it in my phone.

23 MR. TORCZYNER: Counsel, you okay if he  
24 checks his phone?

—DAVID DEAN - 08/14/17—

1 MR. ASPLAND: To see what days he was on and  
2 off that week?

3 MR. TORCZYNER: Yeah.

4 MR. ASPLAND: Sure.

5 A. April; right?

6 MR. ASPLAND: Yeah.

7 A. So I would have been off Thursday, the 14th.

8 Worked the 15th, 16th, 17th, and 18th.

9 Q. That is all I needed. Thank you. So this  
10 midnight tour where you came on at 11:30 when it  
11 was still April 16th, that wasn't the first day  
12 of your shift?

13 A. No.

14 Q. So we had spoken generically about Edson Thevenin  
15 and the events that took place on April 17th,  
16 2016. After the traffic stop, which resulted in  
17 Edson Thevenin's death, had concluded, did you  
18 discuss your role in coming to the scene with  
19 anyone employed by the Troy Police Department?

20 A. Yes.

21 Q. Who did you discuss that with?

22 A. There were detectives. Detective Sergeant White  
23 and Sergeant Bornt were the detectives I spoke  
24 to, and formally that was really it.

DAVID DEAN - 08/14/17

1 Q. Okay. Are sergeant -- we'll, break this down.

2 Is Sergeant White a detective sergeant, or  
3 is he in the detective's bureau?

4 A. Yes. They're are both detective sergeants. Yes,  
5 they're both detective sergeants.

6 Q. And neither of them are assigned to your platoon;  
7 correct?

8 A. Correct.

9 Q. How long after you left the scene of the traffic  
10 stop on April 17th, 2016, did you talk to  
11 Sergeant White; was it the same day?

12 A. No. It was -- I'm not sure how long had passed.  
13 I was -- Sergeant Bornt and -- had requested that  
14 I do an additional report following that meeting.  
15 That would have the date of when I spoke with  
16 them, but I couldn't tell you if it was -- I  
17 would like to say within a week.

18 Q. Did you always talk to both of them about this  
19 event together, or did you ever talk to them  
20 separately?

21 A. I don't remember. I remember being upstairs in  
22 the detective's office. I do remember them both  
23 being there at one time. I can't remember if  
24 there was a time when I only spoke with one them.



—DAVID DEAN - 08/14/17—

1 Q. Okay. So we'll get to your reports. We'll mark  
2 them, and we'll talk a little bit about the  
3 reports you did.

4 Was it more than that one meeting after you  
5 did your report where you met with them, or was  
6 there another meeting beyond that?

7 A. No, there was, I believe -- I believe I met with  
8 them. I went and did my report and brought it  
9 back to them.

10 Q. Okay.

11 A. I just can't remember if they were both there  
12 when I brought it back. That's what I'm having  
13 an issue with. It was one meeting though.

14 Q. Did you ever talk with anyone from the Troy  
15 Districts Attorney's Office or more specifically  
16 the Rensselaer County District Attorney's office?

17 A. Yes.

18 Q. Was that before or after your meeting with  
19 Sergeant White and Sergeant Bornt?

20 A. I don't recall.

21 Q. Did you have more than one meeting with a member  
22 of the district attorney's office?

23 A. Yes, I believe I had two.

24 Q. Did you ever testify before a grand jury?

DAVID DEAN - 08/14/17

1 A. Yes.

2 Q. Did you testify before a grand jury in connection  
3 with what happened with Edson Thevenin?

4 A. Yes.

5 Q. Were your conversations with the Rensselaer  
6 County District Attorney's Office all prior to  
7 that testimony before the grand jury, or were  
8 some after?

9 A. All prior.

10 Q. Do you remember who you met with from that  
11 district attorney's office?

12 A. Yes, Joel Abelove.

13 Q. I don't know if I asked this question already,  
14 but if I did -- was the first meeting with Joel  
15 Abelove before or after your last meeting with  
16 Sergeants Bornt and White?

17 A. I'm not sure when it was in correlation to that  
18 meeting.

19 Q. What do you recall about the meeting with Joel  
20 Abelove?

21 A. Nothing specific. Just going through the  
22 standard questions of what was going to go on for  
23 grand jury, the standard run through series of  
24 events.

—DAVID DEAN - 08/14/17—

1 Q. You had testified before a grand jury before?

2 A. Yes.

3 Q. So sometimes when you testify before a grand jury  
4 the grand jurors themselves ask you questions or  
5 submit questions. Do you recall whether you were  
6 asked any questions during your grand jury  
7 testimony?

8 A. I don't recall.

9 Q. How long did you testify for?

10 A. I also don't recall exactly. I don't remember it  
11 being exceedingly long.

12 Q. Was it over one day, or more than one day?

13 A. It was one day, yes.

14 Q. And who was questioning you?

15 A. Mr. Abelow.

16 Q. Were you given a promise of anything in exchange  
17 for your testimony?

18 A. No.

19 Q. Did anyone mention immunity in connection with  
20 your testimony?

21 A. No.

22 Q. Did anyone mention waiver to you in connection  
23 with your testimony?

24 A. No.

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1 Q. Did you ever speak with any members of any other  
2 law enforcement agency in connection with the  
3 events of April 17th, 2016, involving  
4 Edson Thevenin?

5 A. No.

6 Q. Did you ever speak with anyone from the New York  
7 State Attorney General's Office about the events  
8 of April 17th, 2016?

9 A. No.

10 Q. Do you know who the mayor is of Troy?

11 A. Yes.

12 Q. Who was the mayor in April 17th, 2016?

13 A. Trying to think of when it changed. I believe it  
14 was Lou Rosamilia.

15 Q. I'm sorry?

16 A. Lou Rosamilia. I'm trying to think. Or is it  
17 the current mayor, Patrick Madden? I'm not sure,  
18 I guess, to tell you the truth. I'm not sure  
19 when the election cycle is. It was in that area  
20 of when we changed.

21 Q. Do you remember speaking with the mayor about the  
22 events that took place on April 17th, 2016?

23 A. No.

24 Q. How about the chief of the police department, who

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1 was that on April 17th, 2016?

2 A. The chief is John Tedesco.

3 Q. Did you talk to him about those events?

4 A. No.

5 Q. Okay. So April 17th, 2016, you got Chief  
6 Tedesco. And who's underneath him?

7 A. Directly underneath him is Chief McAvoy.

8 MR. TORCZYNER: Can we go off one second.

9 (An off-the-record discussion was held.)

10 BY MR. TORCZYNER:

11 Q. Did you ever speak with Chief McAvoy about events  
12 of April 17th, 2016, involving Edson Thevenin?

13 A. No.

14 Q. Okay. When you were working first platoon, which  
15 station were you working out of?

16 A. Central Station.

17 Q. You had mentioned Car 62, is the car that you  
18 thought you were assigned to, is that your  
19 regular car?

20 A. Yes.

21 Q. Is that car assigned to any particular sector?

22 A. Zone 2.

23 Q. And what are the geographical boundaries of Zone  
24 2?

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1 A. They're basically Hoosick Street to Ferry Street,  
2 the river, to Lake Street.

3 Q. So if I were to ask you as far as square miles,  
4 would you be able to --

5 A. No.

6 Q. Okay. Were you the only car assigned to Zone 2  
7 on first platoon?

8 A. No.

9 Q. Which other cars were assigned to Zone 2?

10 A. I don't know which physical car, but my partner  
11 -- my call assign would be 201, my partner would  
12 be 202.

13 Q. Who would be 202?

14 A. Officer Parker.

15 Q. I'm going to show you now a document, and I'd ask  
16 you just to take a look at only the first page  
17 that was previously marked French 1. Actually,  
18 it's the first platoon daily sheet for April  
19 17th, 2016.

20 Have you ever seen this before?

21 A. Possibly, yeah.

22 Q. So you see where you're listed as Car 62 in  
23 Sector 201?

24 A. Yes.

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1 Q. And it indicates 06 for the vehicle number with  
2 202 for Parker?

3 A. Yes.

4 Q. What's the UPR mean?

5 A. Urban patrol rifle.

6 Q. So that's what you were assigned to your vehicle?

7 A. Yes. It means I have one in my vehicle, yes.

8 Q. And the call numbers that are 101 and 102 for  
9 zone assignments --

10 A. Yes.

11 Q. -- that's the different sector for South Station?

12 MR. ASPLAND: Central Station.

13 Q. Central Station.

14 A. Yeah. We all work out of the same station, and,  
15 yes. Correct. The first number in each zone  
16 indicates the zone that they are in.

17 Q. And what does 3s mean?

18 A. So the 3 would be Zone 3. These 103 would just  
19 be an extra car within that zone, so if there's  
20 was -- say there was a bunch car larcenies  
21 overnight, the night before, and we had an extra  
22 guy that wasn't in zone, they may make up a 103  
23 spot to have three cars in that area to watch out  
24 for whatever problem they're having.

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1 Q. And what are the 4s?

2 A. The 4s here are just Zone 4. The city is divided  
3 into four zones. There's two vehicles standard  
4 per zone.

5 Q. During a daytime shift, I guess, would it be  
6 second flat?

7 A. Yes.

8 Q. Is it also the same number of vehicles per zone,  
9 or is there more?

10 A. Same. That's our minimum manning is eight.  
11 Anything else would be extra.

12 Q. And it doesn't matter what time of day?

13 A. Correct.

14 Q. Nobody does highway stops; right?

15 A. No.

16 Q. Thank you. Did you ever work with Sergeant  
17 Montanino prior to that night?

18 A. Captain Montanino?

19 Q. Thank you.

20 A. Yes. Prior to being promoted to captain he was  
21 my direct supervisor for the entire time I was on  
22 midnights. So I've worked with him for nine  
23 years in one capacity or another.

24 Q. He was your supervisor, but it was a different



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1 level?

2 A. He was my sergeant until he was promoted.

3 Q. Did you ever take the sergeant's test yourself?

4 A. I did.

5 Q. Are you on the list?

6 A. I am.

7 Q. Good for you. How about Randy French, has he  
8 ever been your sergeant prior to April 17th,  
9 2016?

10 A. He was my sergeant for, I want to say that was a  
11 second bid on midnights, so about a  
12 year-and-a-half prior to that in that area.

13 Q. Do you remember seeing Randy French at roll call  
14 that night?

15 A. Yes. I mean -- I guess, no. Not specifically,  
16 no. This is something I do five nights a week.

17 Q. So this is as good a point as any just to review  
18 the instructions for a minute. You've been a  
19 police officer for nine years. You've always  
20 worked midnights. If I were to ask you if you  
21 had breakfast that morning, you'd probably say  
22 yes, but you don't have an actual recollection of  
23 having that morning a year-plus later.

24 I'm not asking you to answer questions based

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1 on what you think. I'm asking you to answer  
2 questions based on what you know. So when I  
3 asked you if you went to roll call that night,  
4 you weren't sure. Here, I'm asking you if you  
5 saw Randy French at roll call that night. If you  
6 recall seeing him, then give me a yes, and we'll  
7 talk about it. If you don't recall, just let me  
8 know.

9 A. I'm sorry, I do not.

10 Q. Do you socialize with Randy French outside of the  
11 police department?

12 A. Yes.

13 Q. Ever go to pistol ranges or gun ranges with Randy  
14 French?

15 A. Only the city gun range at our biannual  
16 qualification.

17 Q. Qualification and certifications?

18 A. Certification, yes.

19 Q. Right.

20 A. Yes.

21 Q. How about Sergeant Montanino, you ever socialize  
22 with him outside of work?

23 A. Yes.

24 Q. Do you know his spouse?

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- 1 A. Yes.
- 2 Q. Randy French, do you know his spouse?
- 3 A. Yes.
- 4 Q. So we've been mentioning Edson Thevenin. Do you  
5 know who Edson Thevenin was?
- 6 A. Yes.
- 7 Q. Edson Thevenin was the person who was in this  
8 traffic stop who was shot and passed away that  
9 evening or early morning.
- 10 A. Yes.
- 11 Q. Had you ever met Edson Thevenin prior to  
12 April 17th, 2016?
- 13 A. Not that I'm aware of.
- 14 Q. Had you ever of heard Edson Thevenin prior to  
15 April 17th, 2016?
- 16 A. No.
- 17 Q. When was the first time that you heard about the  
18 vehicle, which you later learned was being driven  
19 by Edson Thevenin?
- 20 A. When Sergeant French called out on the traffic  
21 stop with it.
- 22 Q. Okay. What do you recall about that call?
- 23 A. Very little. I recall that we were all dealing  
24 with an issue in Lansingburgh, the majority of

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1 the patrol officers. Sergeant French stopped a  
2 car.

3 We continued to deal with what we were  
4 dealing with in Lansingburgh, and then radio  
5 transmissions started to come over the air  
6 indicating that Sergeant French needed help. I  
7 don't remember specifically what, other than the  
8 transmissions specifically saying, He tried to  
9 run me over.

10 Q. All right. What was the issue in Lansingburgh?

11 A. Just a large house party we were trying to  
12 disburse.

13 Q. This came through a 911 call, or something else?

14 A. I don't recall how it came in.

15 Q. Who got assigned out to the house party?

16 A. I don't know. I know it was in Zone 4. But I  
17 don't know if Zone 4 was busy. Zone 3 could have  
18 been dispatched to it. I'm not sure how it  
19 worked out.

20 Q. You had mentioned, We had all got assigned out to  
21 Lansingburgh. How many people were there --  
22 withdrawn.

23 How many officers were there?

24 A. Probably six of us or seven of us.

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1 Q. To disburse one house party?

2 A. It was a large group.

3 Q. You said it was a large house party. I didn't  
4 think it was a large house; I figured it was a  
5 large party.

6 A. Large party, yes. Large group at the party. We  
7 were trying figure out whose house it was, figure  
8 out what was going on.

9 Q. Do you know when you got sent out to that call to  
10 the house party?

11 A. I don't.

12 Q. Do you have anything that would refresh your  
13 recollection?

14 A. I didn't complete any paperwork on that. It  
15 would have to be in shy of the radio  
16 transmissions.

17 Q. Did you ever see a listing of the radio  
18 transmissions after the fact?

19 A. I have not.

20 Q. Did you ever hear of the radio transmissions  
21 after the fact?

22 A. I don't believe so.

23 Q. You ever hear of Phil Gross?

24 A. I've heard the name.

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1 Q. Okay. Are you aware that Phil Gross took a cell  
2 phone video pursuant of what took place that  
3 night?

4 A. Yes.

5 Q. Did you see that video?

6 A. Yes.

7 Q. Who showed it to you?

8 A. Sergeant Bornt and White.

9 Q. Why?

10 A. They were trying to ask me if I could recollect  
11 how I got from one side of the vehicle -- or one  
12 side of Mr. Thevenin's vehicle to the other side  
13 of Mr. Thevenin's vehicle.

14 Q. Did you see yourself in the video?

15 A. I did.

16 (An off-the-record discussion was held.)

17 BY MR. TORCZYNER:

18 Q. Had you taken a meal break yet at the time you  
19 went on this call?

20 A. No.

21 Q. So you heard the radio call that French had  
22 stopped a car?

23 A. Yes.

24 Q. Did you have your radio on your belt at that

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1 point?

2 A. Yes.

3 Q. At that point you were in the middle of  
4 disbursing the house party; right?

5 A. Yes.

6 Q. Do you have recollection sitting here today of  
7 hearing the call that French had stopped a car,  
8 or was that something that you read that tells  
9 you that you said that?

10 A. No, I do remember it.

11 Q. What do remember about it?

12 A. Nothing specifically other than kind of thinking,  
13 I wish I wasn't as far -- I wish I was able to  
14 leave here to go and back him up, which I wasn't  
15 at the time. That's why I remember it.

16 Q. Do you generally back up your sergeant on a DWI  
17 stop?

18 A. I back up anybody who pulls a car over in my zone  
19 regardless of who it is.

20 Q. Is that something that you're supposed to do, or  
21 that's just something of a personal  
22 responsibility thing?

23 A. It's just -- I don't know that it's something not  
24 written anywhere. It's just a safety thing, I

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1           guess. We try do it as much possible. If we're  
2           available, we do it.

3       Q.    Okay. If another car in your zone had already  
4           gone to Sergeant French, would you have still  
5           wanted to have gone?

6       A.    If it was in my zone, that would lend to where  
7           it's more personal preference. I like to be --  
8           anything that's going on in my zone I like to  
9           know. I like to --

10      Q.    Do you bid on that zone, or you just get randomly  
11           assigned to it, or they just know you like it but  
12           it's not a bid process, or something else?

13      A.    I bid on it yearly. We bid once a year, so I'm  
14           always that same exact number.

15      Q.    So you bid on the platoon and you bid on the  
16           zone?

17      A.    Yes.

18      Q.    So you heard him say that he stopped the car, and  
19           you continued with this disbursal?

20      A.    Yes.

21      Q.    About how much time passed after you heard him  
22           say he stopped the car until the next time you  
23           heard a transmission from him?

24      A.    I don't remember.



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1 Q. Did you say to anybody in this Zone 4  
2 Lansingburgh house party, You know, I need to go  
3 back up my sarge, I got to get out of here?

4 A. No, because I was kind of hanging back, watching  
5 the overall disbursal as opposed to -- there were  
6 officers trying to figure out, ascertain who  
7 lived there, who was responsible for the place.  
8 I was just kind of hanging back, just making sure  
9 as they were leaving, everything was nice, nobody  
10 was --

11 Q. Nobody getting in the car drunk?

12 A. That, nobody causing any damage, everybody was  
13 leaving, no fighting. So I was kind of hanging  
14 back until at some point somebody asked, they did  
15 finally locate an owner or occupant, and somebody  
16 asked me if I had a ticket on me, a uniform  
17 appearance ticket for city ordinance.

18 Q. For having too many people there or noise?

19 A. Noise violation, yes.

20 Q. It was either one or the other?

21 A. Noise violation. So I got that.

22 Q. Nobody under age?

23 A. Not that we saw, no. With six officers and 120  
24 people it's hard to check everybody's ID, but we

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1 do the best we can.

2 Q. Okay. And you heard the next call from Sergeant  
3 French, what do you recall about that next call?

4 A. I remember being surprised because I -- and,  
5 again, I haven't listened to the radio  
6 transmissions to see if it was something I  
7 misheard or something I didn't hear, but I was  
8 under the impression that Sergeant French had  
9 cleared that traffic stop.

10 So when I started hearing the radio calls of  
11 Sergeant French, I actually said -- I think my  
12 partner, Officer Parker at the time, I said like,  
13 Is that Sergeant French? Where is he? Because I  
14 thought he had cleared and stopped at something  
15 else that I'd missed. So he said no. He said  
16 that the traffic stop --

17 Q. What did you hear that prompted you to say, I  
18 thought he cleared that call?

19 A. I don't remember specifically what it was. I  
20 think something along the lines of Sergeant  
21 French saying, I need a little help here. I need  
22 help here. Something along those lines. Not  
23 specifically that, but something along that.

24 Q. Do you know what OC is?

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1 A. Yes.

2 Q. Carry it on your belt often?

3 A. Yes.

4 Q. Did you hear Sergeant French say that he used OC?

5 A. Not that I recall.

6 Q. So you said something to your partner that you  
7 thought it was cleared. What did he say to you?

8 A. He said, I thought he was on that traffic stop.

9 Q. Okay. As this point are you still hanging back  
10 or are you heading to your car or something else?

11 A. At this point I'm just waiting to get my ticket  
12 book back from the officer I had given it to.

13 Q. Who did you give it to?

14 A. Officer Fitch. When the more -- when the radio  
15 transmissions came over, whatever they were,  
16 indicated Sergeant French was in trouble, I got  
17 in the car and left without my ticket book.

18 Q. I heard you say something or you testified that  
19 you heard him say, He tried to run me over?

20 A. Yes.

21 Q. To your knowledge, did -- withdrawn.

22 Did Sergeant French ever tell you that  
23 Thevenin had tried to run him over?

24 A. The way I recall it, is I heard it over the

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1 radio.

2 Q. You've already given your testimony about what  
3 you heard over the radio. I'm talking about  
4 after the fact.

5 A. After the fact, not that I can specifically  
6 recall, no.

7 Q. Did you talk to Sergeant French after the traffic  
8 stop ended that resulted in the death of  
9 Edson Thevenin?

10 A. Yes.

11 Q. What did you talk to him about?

12 A. I was trying -- I was the one that transported  
13 him to the hospital. I was trying to get a feel  
14 for what he thought his injuries were. I was  
15 trying to get his mind off of his injuries.

16 I remember actually -- it must have been  
17 from dragging Sergeant French from the car, I got  
18 pepper spray on me or OC. And when I finally got  
19 in the car and started driving, I kind of did one  
20 of these (indicating) and felt the -- or brushed  
21 my arm against my head, and I could feel the burn  
22 of the OC. And I remember saying, like not  
23 giggling, but like, Hey, so you had to pepper  
24 spray him; right? Because I had gotten it on me.

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1           That is when I had learned that shots were  
2           fired. And in response to my trying to lighten  
3           the situation, get his mind off the injuries, he  
4           said, Yeah. I had to shoot him. I said, You  
5           did? I did not know at that point. He said,  
6           Yeah. He said, I didn't have a choice.

7           Q.   Okay. I'd like to actually get back to that  
8           conversation. It's a little out of order for  
9           where we're going with this, so just keep that in  
10          the back of your head.

11          A.   Sure.

12          Q.   But I would like to talk to you about it.

13                After you heard, Tried to run me over, where  
14                did you go?

15          A.   I went towards 6th and Hoosick.

16          Q.   Which route did you drive to take 6th and  
17                Hoosick?

18          A.   Well, the location of where they were started  
19                changing as I was driving, but I came south on  
20                River Street. The address of the party was an  
21                address on 2nd Avenue. So I came south from 2nd  
22                Avenue, which turns into River Street, and then  
23                at this point they are saying they are on the  
24                bridge.

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1 Q. Which bridge is that?

2 A. That was what I tried to get over the radio to  
3 make sure we were talking about the Collar City  
4 Bridge. And I don't know whether somebody  
5 answered me or not, but that was the closest  
6 bridge. So I went up Jay Street, got on the  
7 on-ramp, and when I got to the Collar City Bridge  
8 I saw that they were east of where the on-ramp  
9 meets.

10 Q. So we'll get into what you saw. But who was  
11 giving you the instructions as far as where they  
12 were?

13 A. I don't remember.

14 Q. So you go east on the bridge, and you said you  
15 saw them. What exactly is the "them" that you  
16 saw?

17 A. I saw Sergeant French's car, Mr. Thevenin's car,  
18 and Captain Montanino's car.

19 Q. Were you heading in the correct lane of traffic  
20 on the bridge when you saw those cars?

21 A. I was until I saw the cars, then I went the wrong  
22 way.

23 Q. So when you were in the correct lane of traffic,  
24 which direction were you driving on the bridge?

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- 1 A. West.
- 2 Q. You were west in the westbound lane?
- 3 A. Yes.
- 4 Q. About how long after you got on the bridge did
- 5 you see those three cars?
- 6 A. As soon as the lanes started to merge I could see
- 7 the lights and cars.
- 8 Q. Which car was closest to you?
- 9 A. Sergeant French's.
- 10 Q. And Sergeant French's car was positioned in which
- 11 way; was it parallel to the cement median on the
- 12 left side, perpendicular to it, at an angle?
- 13 A. It was at an angle.
- 14 Q. Was Sergeant French in his vehicle at that point?
- 15 A. No.
- 16 Q. Were his lights on?
- 17 A. Yes.
- 18 Q. When I say "lights," I need to be more specific.
- 19 You have lights, like headlights, and lights like
- 20 red lights that come on top of the car,
- 21 multi-colored lights. Which lights were on?
- 22 A. I don't know about headlights, but the emergency
- 23 lights I believe were on.
- 24 Q. How many lanes of traffic is eastbound at that

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1 point of the bridge?

2 A. I believe two.

3 Q. Was Sergeant French's car blocking both lanes of  
4 traffic eastbound on the bridge?

5 A. No.

6 Q. So which lane of traffic was it blocking?

7 A. The southern-most lane.

8 Q. The southern-most lane? The lanes are going east  
9 and west. Are you talking about towards the  
10 median; is that what you mean by southern-most?

11 A. Yeah, you could put it that way, towards --

12 Q. Okay. So if you're driving eastbound, it's the  
13 left lane that he's blocking?

14 A. No. If you're driving eastbound, it would be the  
15 right lane.

16 Q. Okay. He was going -- his car was in the  
17 westbound lane of traffic?

18 A. Both lanes are westbound.

19 Q. Okay.

20 A. He was in -- if you were westbound on the road,  
21 he would be in the left-most lane against the  
22 jersey barriers for medians.

23 Q. And the right lane was not occupied by his car?

24 A. No, I don't believe so. I believe I was parked



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1 in the right lane.

2 Q. Was his car parallel to the jersey barrier, to  
3 use the term you used?

4 A. No, it was at an angle to it.

5 Q. But even though it was at an angle, it wasn't  
6 blocking any other lanes; it was just in one  
7 lane?

8 A. Well, there's a significant shoulder beyond the  
9 lane.

10 Q. Okay.

11 A. Probably half the vehicle was on that shoulder,  
12 and then some of it in the actual driving lane  
13 leaving another driving lane and another  
14 significant shoulder on the other side.

15 Q. And at that point was Edson Thevenin's vehicle in  
16 contact with Sergeant French's car when you first  
17 saw it?

18 A. Yes.

19 Q. Which part of Sergeant French's car was in  
20 contact with it?

21 A. The way I recall, it was the area just behind or  
22 in the area of the rear driver's side door,  
23 slash, quarter panel, in that area.

24 Q. Sergeant French's car was a four-door car?

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1 A. Yes.

2 Q. Okay. When you say "the rear driver's side  
3 door," are you talking the passenger door?

4 A. Yes, the passenger door on -- the rear passenger  
5 door on the driver's side.

6 Q. So when you first see Thevenin car it's in  
7 contact with the rear or the passenger door on  
8 the driver's side of the vehicle, and then the  
9 rear quarter panel beyond that on his vehicle?

10 A. Well, that area, yes. Like I said, I don't know  
11 specifically whether it was the door or the  
12 quarter panel, but that was the area, yes.

13 Q. At this point where was Sergeant Montanino's car  
14 when you saw Thevenin's vehicle in contact with  
15 those portions of Sergeant French's car?

16 A. Behind Mr. Thevenin's car.

17 Q. Was it in contact with Mr. Thevenin's car?

18 A. No.

19 Q. Was it parallel with the jersey barrier, or was  
20 it also at an angle?

21 A. Parallel.

22 Q. And Thevenin's car, was it parallel with the  
23 jersey barrier although in contact with French's  
24 car, or was it at an angle?

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- 1 A. It was at an angle.
- 2 Q. How much of an angle?
- 3 A. I don't know.
- 4 Q. So you're pulling your car and you're driving
- 5 towards Sergeant French's car as it's sitting at
- 6 this somewhat of an angle in the median and into
- 7 that travel lane. Are you hearing Sergeant
- 8 French speak at this point?
- 9 A. Once I got out, yes.
- 10 Q. Before you got out did you hear Sergeant French?
- 11 A. No.
- 12 Q. Do you recall hearing anything on the radio at
- 13 that point?
- 14 A. No.
- 15 Q. Were your windows open or closed, if you
- 16 remember?
- 17 A. I don't.
- 18 Q. Were you talking on the radio to say you were
- 19 responding?
- 20 A. I don't remember. I know I was trying to ask
- 21 questions, I don't know whether they got over it
- 22 or not.
- 23 Q. Did you hear Sergeant Montanino giving
- 24 play-by-play?

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1 A. Yes.

2 Q. What do you recall hearing Sergeant Montanino  
3 saying?

4 A. Well, now that I think about it, I believe he was  
5 the one that said they were on the bridge.

6 Q. Okay. And that's when you said you wanted to  
7 figure out if it was Collar City?

8 A. Collar City or westbound, eastbound, which side,  
9 you know, did I want to go up the ramp like I  
10 did, or should I be going through. There's -- I  
11 don't know if you're familiar with it, but  
12 there's two sections of that highway divided by a  
13 road that you can drive through underneath. So  
14 it was important where I was coming from to get  
15 there efficiently to know which side of the  
16 bridge they were on.

17 Q. Do you know what time you left where you were  
18 coming from at the Lansingburgh party?

19 A. I don't.

20 Q. Do you know what time you stopped your car on the  
21 bridge?

22 A. I don't.

23 Q. Some point around the middle of your shift?

24 A. Without looking, I couldn't even tell you what

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1 time.

2 Q. Okay. At some point we'll get to the reports  
3 that you filled out; we'll see if that refreshes  
4 your recollection about time.

5 Okay. So you're now pulling your car, and  
6 did you eventually park your car?

7 A. Yes.

8 Q. And position-wise, are you parallel to the jersey  
9 barrier or at an angle or something else?

10 A. Parallel.

11 Q. About how far from Sergeant French's car were you  
12 when you stopped your car?

13 A. I'm not sure exactly.

14 Q. Did you ever hear gunshots that night?

15 A. I did not.

16 Q. So you stopped your car, and you don't remember  
17 if the windows were open; correct?

18 A. I don't.

19 Q. So after you stopped your car you got out of your  
20 car?

21 A. Yes.

22 Q. Through the driver's door?

23 A. Yes.

24 Q. At this point you're basically facing against

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1 traffic; correct?

2 A. Yes.

3 Q. What happens next after you get out of your  
4 driver's door?

5 A. I ran around my vehicle towards the scene of the  
6 vehicles.

7 Q. Well, if your vehicle is facing theirs, why would  
8 you be running around your vehicle?

9 A. My vehicle was next to theirs, so I was getting  
10 -- they were on the -- of the two lanes, they  
11 were on the south side. My driver's side door  
12 would have been on the north side.

13 Q. So you were to the left, I guess, as you were  
14 driving; correct?

15 MR. ASPLAND: To the left of what?

16 A. Yeah, to the --

17 Q. If there were two lanes of traffic, you would be  
18 in the left lane of traffic; correct?

19 A. If you were going the wrong way, yes.

20 Q. But that's the way you were driving; right?

21 A. Yes.

22 Q. Okay. So you were in the left lane when you  
23 stopped your car?

24 A. Yes.

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1 Q. So you got out of your door. And when you say  
2 you went around your car, did you go around  
3 towards the back and around the other side, or  
4 you went some other way?

5 A. I'm not sure. I don't know if I went around the  
6 front or around the back, but I know that I had  
7 to get around.

8 Q. Okay. So after you get around the car, what did  
9 you see?

10 A. I saw Sergeant French pinned between his vehicle  
11 and Mr. Thevenin's vehicle. I saw Captain  
12 Montanino on the driver's side of Mr. Thevenin's  
13 vehicle. That's what I saw.

14 Q. Which part of Sergeant French's vehicle is in  
15 contact with his own vehicle?

16 MR. ASPLAND: I'm sorry?

17 A. Yeah, sorry.

18 Q. You said Sergeant French was pinned between  
19 Thevenin's vehicle and his own car?

20 A. Yes.

21 Q. Which part of Sergeant French's vehicle was he  
22 pinned against?

23 A. The same area that I spoke of before, by the rear  
24 passenger driver's side door and quarter panel.

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- 1 Q. Sergeant French conscious at this point?
- 2 A. Yes.
- 3 Q. Which part of Sergeant French's body was in
- 4 contact with the Thevenin vehicle?
- 5 A. I found out later that it was his --
- 6 Q. I don't want to know about later. I want to know
- 7 what you saw.
- 8 A. What I saw?
- 9 Q. Yes.
- 10 A. If I had to guess, at the time I thought his hip
- 11 area, lower torso was pinned.
- 12 Q. Okay. Which hip, or was it both?
- 13 A. Both.
- 14 Q. So both hips are in contact with -- the back of
- 15 his hips are in contact with his vehicle?
- 16 A. Yes.
- 17 Q. And the front of his hips or pelvis is in contact
- 18 with the Thevenin vehicle?
- 19 A. Yes.
- 20 Q. Conscious the whole time, as far as you can see;
- 21 correct?
- 22 A. Yes.
- 23 Q. Was he saying anything at this point?
- 24 A. He was screaming for us to please get the



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1 vehicles, please move the vehicle off of him.

2 Q. Was he actually saying "please"?

3 A. I think at one point he did, actually.

4 Q. And did you see a driver inside Thevenin's  
5 vehicle at this point?

6 A. No.

7 Q. And you said you saw Sergeant Montanino by the  
8 driver's side door of Thevenin's vehicle?

9 A. Yes.

10 Q. What was Sergeant Montanino doing?

11 A. He was standing there yelling at the driver, what  
12 I thought -- the way -- I don't know exactly what  
13 he was doing. What I inferred from what I saw is  
14 that he was actively yelling at this driver to  
15 get out of the vehicle.

16 Q. At this point you couldn't see the driver at all?

17 A. Correct.

18 Q. Was the windshield tinted on Thevenin's vehicle?

19 A. Not that I can recall.

20 Q. You just didn't see him?

21 A. Right.

22 Q. So you see Sergeant Montanino -- Captain  
23 Montanino by the driver's side door, you see  
24 Randy French. Do you see any other police

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1 officers at this point?

2 A. No.

3 Q. Any civilians?

4 A. No.

5 Q. So what do you do after you come around your car  
6 and hear Randy French say, Please get this car  
7 off of me?

8 A. I walk between Mr. Thevenin's car and  
9 Captain Montanino's car around to where Captain  
10 Montanino is standing near the driver's side door  
11 of Mr. Thevenin's door.

12 Q. You were able to fit in that area?

13 A. Yes.

14 Q. Do you hear the tires spinning on Thevenin's car?

15 A. No.

16 Q. Do you hear the engine racing?

17 A. No.

18 Q. Was Thevenin's car on at that point?

19 A. I cannot say.

20 Q. What did you do next?

21 A. When I got over to the driver's side I saw that  
22 Mr. Thevenin was on the ground facedown.

23 Q. Was he moving?

24 A. Yes.

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- 1 Q. Was he bleeding?
- 2 A. Not that I saw.
- 3 Q. Was he making any sounds?
- 4 A. Not that I heard.
- 5 Q. What was he doing that you said he was moving?
- 6 A. His arm, forearm, hand areas were moving.
- 7 Q. Both hands?
- 8 A. Not that I recall now. I only remember one
- 9 moving.
- 10 Q. Which one?
- 11 A. I guess it would be the right.
- 12 Q. Did he have anything in his hands?
- 13 A. No.
- 14 Q. At that point you had not heard anything about
- 15 shots fired?
- 16 A. No.
- 17 Q. Even over the radio?
- 18 A. No.
- 19 Q. Did you see Thevenin exit his vehicle?
- 20 A. No.
- 21 Q. Do you know if Mr. Thevenin was ejected from his
- 22 vehicle?
- 23 A. No, I don't. I don't know.
- 24 Q. How tall are you?

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1 A. Five-ten.

2 Q. Thevenin's on the ground. When you see him on  
3 the ground, did he appear to be taller than you?

4 A. I have no idea.

5 Q. Was he flat on his stomach or was he curled or  
6 something else?

7 A. Flat on his stomach.

8 Q. So what did you do next?

9 A. I inferred that he -- his hand movements led me  
10 to believe that he was either grabbing after  
11 Captain Montanino's leg or attempting to get up.  
12 The way that he was positioned on the ground is  
13 exactly the way that -- if we're going to order  
14 somebody out of the vehicle, is exactly how we  
15 would position somebody.

16 Q. Okay.

17 A. I ordered him to stop moving, stop moving, keep  
18 your hands where they are, keep your hands where  
19 they are. His hand continued to move.

20 Q. Was his hand moving on the ground, up in the air,  
21 something else?

22 A. Kind of up in the air.

23 Q. Whole arm or just from the elbow or something  
24 else?

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- 1 A. More from the elbow forward.
- 2 Q. So from the elbow his hand is reaching up?
- 3 A. Yes.
- 4 Q. It's his right hand, you said?
- 5 A. Yes.
- 6 Q. You still couldn't see his face at this point?
- 7 A. Could not.
- 8 Q. Didn't see any blood?
- 9 A. Nope.
- 10 Q. Didn't hear him say anything?
- 11 A. No.
- 12 Q. Okay. So you instructed him to stop moving. And
- 13 did he respond to you in any way?
- 14 A. No.
- 15 Q. Sirens still going on?
- 16 A. Yes.
- 17 Q. Loud?
- 18 A. Yes.
- 19 Q. Did you have a thought that he couldn't hear you?
- 20 A. No.
- 21 Q. So after you told him to stop moving and he
- 22 continued to move his hands, what did you do
- 23 next?
- 24 A. As I said before, my -- the way that

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1 Captain Montanino was over near that area, I  
2 assumed that the driver was still in the vehicle  
3 even though I did not see him. On the way  
4 through I got my collapsible baton out, in which  
5 in my head I'm going to go wrap it around this  
6 guy and drag him out of the car so we can get the  
7 car moved back, you know, once this guy is out.

8 When he doesn't move, I swing the baton  
9 towards him. I couldn't tell you where I hit  
10 him. The movement in hand -- hands stopped, and  
11 that was it.

12 Q. How close was the hand to Sergeant Montanino --  
13 or Captain Montanino's leg?

14 A. It was touching his pant leg.

15 Q. So Thevenin has contact with Captain Montanino's  
16 leg?

17 A. Yes.

18 Q. Which part of his leg?

19 A. His -- I'm sorry, his pant leg. Not his physical  
20 leg. His pant --

21 Q. Okay. Which -- the pant leg is on his pants;  
22 right? Not off?

23 A. Right.

24 Q. Which part of the leg is the pant leg on? Ankle?

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1 A. By his ankle, yes. Yes. By his ankle, yes.

2 Q. Is Sergeant Montanino saying anything to  
3 Thevenin?

4 A. I don't recall what he was saying.

5 Q. So you fully expended your baton?

6 A. Yes.

7 Q. And then you struck Thevenin, but you don't know  
8 where?

9 A. I do not.

10 Q. How many times?

11 A. Once.

12 Q. And after you struck him once, then the hand  
13 stopped moving?

14 A. Yes.

15 Q. Did you say anything to him after that?

16 A. Don't move.

17 Q. Did you cuff him?

18 A. I did not.

19 Q. What did you do next?

20 A. I was closest to the driver's side, the driver  
21 area of Sergeant French's car. At this point  
22 there were other officers there. I made my way  
23 over to Sergeant French's vehicle, got in the  
24 driver's seat thinking that I was going to have

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1 enough room to maneuver away from Mr. Thevenin's  
2 vehicle and release Sergeant French from being  
3 stuck.

4 I got in, looked and saw where I was,  
5 realized that it wasn't going -- the angles  
6 weren't going to work. It was just going to  
7 either crush him further or slide him one way or  
8 another, so I got back. At that point somebody  
9 was screaming to, Let's just pick the car up.  
10 We'll just pick the car up and move it.

11 So a bunch of us grabbed the car, we moved  
12 it. As soon as it started to move, I jumped over  
13 the hood and grabbed Sergeant French and dragged  
14 him from in between the two cars.

15 Q. Did you check Sergeant French for any kind of  
16 injury before you started to move his car?

17 A. No.

18 Q. How close was Thevenin on the ground to  
19 Sergeant French's car?

20 A. I don't know. I'm not sure.

21 Q. Less than a foot?

22 A. No. To Sergeant French's car?

23 Q. Yes.

24 A. No, I would say closer to -- if I had to put an



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1 area on it, from five to ten feet.

2 Q. Is Thevenin along the driver's side of his car,  
3 or he's further back along his car?

4 A. Driver's side.

5 Q. Driver's side. Is it a four-door or two-door; do  
6 you remember?

7 A. I don't.

8 Q. But his hands are out, they're reaching up from  
9 the ground towards the pant leg. Are they past  
10 the front driver's side wheel of the car?

11 A. No.

12 Q. So he's further back?

13 A. Driver's side door was open; he was to the rear  
14 of that.

15 Q. His hands were to the rear of that?

16 A. Yes.

17 Q. And the rest of his body was further back than  
18 that?

19 MR. ASPLAND: Just note objection to form.

20 MR. TORCZYNER: Sure.

21 A. I don't recall which way he was facing. I don't  
22 know whether his -- I don't know whether his feet  
23 were under the car or towards the wheel or the  
24 back or the front. I'm not sure.

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1 Q. As you're standing over Thevenin and giving him  
2 instructions to put his hand down or stop moving,  
3 are you facing him on the ground, or are you  
4 alongside him?

5 A. I don't remember. I'm not sure.

6 Q. Are you right- or left-hand dominant?

7 A. Right.

8 Q. Which hand did you swing the baton with?

9 A. I would have to look back at my paperwork. I'm  
10 not sure.

11 Q. Were you crouching when you swung the baton, or  
12 were you standing?

13 A. Standing.

14 Q. Other than Thevenin's hand, was there any part of  
15 his body that was off of the ground when you  
16 swung the baton?

17 A. Not that I recall.

18 Q. Did you see Thevenin's eyes before you swung the  
19 baton?

20 A. No.

21 Q. Which way was Thevenin's head?

22 A. Facedown.

23 Q. So when he's grasping, he can't even see what  
24 he's grasping at; right?

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- 1 A. Right.
- 2 Q. Okay. When you entered Randy French's car, did
- 3 you enter through the driver door or passenger
- 4 door?
- 5 A. Driver.
- 6 Q. Were the keys in the car?
- 7 A. I don't remember.
- 8 Q. How long did you sit in the car for?
- 9 A. It was quick. Maybe five or six seconds, got in,
- 10 realized it wasn't going to work, got out.
- 11 Q. Who said to move the car off of him?
- 12 A. The way I recall it, Officer Marble was the one
- 13 who was trying to get everybody to do that.
- 14 Q. And what did you do after you heard Officer
- 15 Marble say, Let's move the car off of him?
- 16 A. I grabbed the car.
- 17 Q. Which part?
- 18 A. The front bumper.
- 19 Q. And this is the front bumper. When you say "the
- 20 car," that's Thevenin's car; right?
- 21 A. Yes, sir.
- 22 Q. Was Thevenin still moving at this point?
- 23 A. I'm not in a position to see him at this point.
- 24 Q. You have your hands underneath the bumper?

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1 A. Not sure exactly where they were.

2 Q. Did you try to pick it up or did you try to push  
3 it back or something else?

4 A. A little bit of both.

5 Q. Is there anybody sitting in the driver's seat at  
6 this point?

7 A. Not that I recall.

8 Q. Did somebody try to put the car in neutral, to  
9 your recollection, or reverse?

10 A. No, not that I'm -- not that I'm aware of.

11 Q. How many people are trying to move that car?

12 A. All I could tell you for sure is that there's  
13 three of us: myself, my partner Officer Parker,  
14 and Officer Marble were all there for sure.  
15 That's all, a hundred percent, I know.

16 Q. We talked before about Phil Gross. Do you  
17 remember seeing Phil Gross trying to move the  
18 car?

19 A. I do not.

20 Q. Were you able to move the car together with your  
21 other two officers?

22 A. Yes.

23 Q. About how much did you move the car in distance?

24 A. Just enough to get him loose. I would say no

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1 more a than foot.

2 Q. And after Randy French gets loose, as you use  
3 that term, does he fall on the ground, or  
4 something else?

5 A. I don't remember exactly what happened to him. I  
6 know that I jumped -- I jumped over the hood of  
7 the car and grabbed him by the top of his uniform  
8 and dragged him further away, but I don't know if  
9 he just fell when we moved it or if there was  
10 somebody else over -- I'm not sure.

11 Q. Was he walking when you dragged him, or was he  
12 being dragged?

13 A. No, we dragged him.

14 Q. Who else is "we"?

15 A. Me and Officer Parker. His shoelaces were cut --  
16 were caught on the -- some part of the vehicle.

17 Q. "The vehicle," meaning Thevenin's vehicle?

18 A. Yes. Somebody asked for a knife. I think I gave  
19 them my knife. They cut the shoelaces. Then my  
20 vehicle was right there parallel to -- basically  
21 in between where we were, to put him in the back,  
22 and drove away.

23 Q. Was Randy French walking under his own power to  
24 get into your car or did you physically have to

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1 pick him up and put him in your car or something  
2 else?

3 A. We, myself and Officer Parker, kind of acted as  
4 his crutches, and we kind of -- he sort of  
5 hobbled, slash, we picked him up and stuffed him  
6 in.

7 Q. And at no point did he lose consciousness;  
8 correct?

9 A. No.

10 Q. At the time that you and Officer Parker put Randy  
11 French in your car, was anyone attending to  
12 Thevenin?

13 A. There -- I couldn't say.

14 Q. You couldn't say because you couldn't identify  
15 who was there, or you have no recollection of  
16 seeing it?

17 A. I couldn't say because once I moved on from the  
18 driver's side door of the Thevenin's vehicle, my  
19 view of -- one, my view of what was going on over  
20 there was obstructed. I knew that there were --  
21 there were other officers behind me who were  
22 taking over that area of responsibility, and I  
23 didn't really look that way again, to tell you  
24 the truth.

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1 Q. Did anyone else go with you and Sergeant French  
2 when you left the Collar City Bridge?

3 A. No.

4 Q. So Officer Parker was not in your car with you;  
5 correct?

6 A. Correct.

7 Q. Where did you go when you left the Collar City  
8 Bridge?

9 A. I turned around, facing west, and got on 787,  
10 went to Albany Med.

11 Q. That's New Scotland Avenue, or that's a different  
12 hospital?

13 A. Correct. New Scotland Avenue, I believe. I'm  
14 not familiar with Albany Med.

15 Q. Why did you choose Albany Med?

16 A. We're told from the academy on if you ever have  
17 an issue with an officer to bring him to Albany  
18 Med.

19 Q. Is it a Level 1 trauma center?

20 A. Yes.

21 Q. That's probably why?

22 A. It's engrained in me. If there's a SWAT team  
23 activation or anything like that near the  
24 ambulance car, it's just go, face towards Albany

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1 Med, and go. So that's where I went.

2 Q. Did you radio to Albany Med that you were coming?

3 A. I radioed to dispatch to make that notification.

4 Q. What did you radio to dispatch?

5 A. Just that I had -- I don't know whether I said  
6 112 or Sergeant French, and that we were headed  
7 to Albany Med.

8 Q. And did you say that they needed to have any kind  
9 of special people on-site, people that needed to  
10 be ready?

11 A. No.

12 Q. Had you ever transported to Albany Med before?

13 A. No.

14 Q. Did anyone offer to sit in the back with  
15 Sergeant French?

16 A. No.

17 Q. Was Sergeant French sitting up, lying down,  
18 something else?

19 A. Somewhere in between, from what I recall.

20 Q. The in between, was it butt in the seat?

21 A. I think he was -- I say in between. I think he  
22 was kind of laying down when we put him in there.  
23 And then I think once he settled down a little  
24 bit he kind of inched up and was sitting.



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1 Q. How long did it take to get from the bridge to  
2 Albany Med?

3 A. I don't know.

4 Q. How long does it usually take at 3 in the  
5 morning?

6 A. I mean, probably six minutes. Somewhere in  
7 there.

8 MR. TORCZYNER: Off the record for a minute.

9 (An off-the-record discussion was held.)

10 BY MR. TORCZYNER:

11 Q. Did you go into the hospital with  
12 Sergeant French?

13 A. Yes.

14 Q. At what time did you get to the hospital; do you  
15 know?

16 A. I don't.

17 Q. How long did you stay at the hospital for?

18 A. Couple hours. I don't know specifically. It was  
19 a little bit.

20 Q. Were you with Sergeant French in the treatment  
21 room?

22 A. Some of the time, yes.

23 Q. What else were you doing there?

24 A. I collected all of his clothing, equipment. I --

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1           that was about it. I notified the PBA president.  
2           And just updated people to his condition as I got  
3           updates. That was about it.

4       Q.   Was there OC on his uniform?

5       A.   Yes.

6       Q.   You noticed OC on his uniform?

7       A.   I noticed it because I touched his uniform and  
8           touched --

9       Q.   You mentioned that you got OC on your hand, but  
10           I'm asking you if you noticed OC on his uniform.

11      A.   No. I guess, no. Not specifically, no.

12      Q.   Is it possible that the OC that you got on you  
13           could have been from the canister puncturing at  
14           some point?

15      A.   I suppose.

16      Q.   Do you know that you got OC on you from his  
17           uniform?

18      A.   No, I just assumed because it was only on my  
19           hands, and he was the only one I had touched.

20      Q.   Okay. Let's start talking about those reports.  
21           I'm going to show you a couple of documents that  
22           we're going to mark as Dean, and then we'll have  
23           a number after that. It's meant as a  
24           disrespectful way. But we're using your name and

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1 a number as opposed to Officer Dean or something  
2 like that. That's just the way we identify  
3 exhibits.

4 A. No problem.

5 (Plaintiffs' Dean Exhibits 1, 2, and 3 were  
6 marked for identification.)

7 Q. All right. I show you now a document that's  
8 marked as Dean 1. Take a look at it, and let me  
9 know when you're done.

10 A. Okay.

11 Q. So this is a report indicating it's TPD 120,  
12 which is a standard Troy Police Department  
13 report; correct?

14 A. Yes.

15 Q. And it has a signature underneath, D. Dean 7696.

16 Is that your signature?

17 A. Yes.

18 Q. Did you prepare this report?

19 A. Yes.

20 Q. Where were you when you prepared this report?

21 A. Police station.

22 Q. Was anyone with you when you prepared this  
23 report?

24 A. There were several people around. Nobody was

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1 assisting me.

2 Q. Did you have any written notes that you used in  
3 order to prepare this report?

4 A. No.

5 Q. So this report was from your recollection?

6 A. Yes.

7 Q. Do you know what time it was when you typed this  
8 report?

9 A. No.

10 Q. It indicates the date of the report is April 17,  
11 2016?

12 A. Yes.

13 Q. And it's signed off by a sergeant whose name I  
14 can't read. Do you know which sergeant that is?

15 A. Appears to be Keler.

16 Q. Was Sergeant Keler on duty on April 17th, 2016?

17 A. He would have started at 7 a.m. that morning.

18 Q. So he's the second platoon sergeant?

19 A. Yes. One of the them, yes, second.

20 Q. Had you already returned from the hospital when  
21 you filled out this report?

22 A. Yes.

23 Q. Did you go back to the hospital again after you  
24 filled out this report?

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1 A. No.

2 Q. It's a type of original report 32.05, what does  
3 that mean?

4 A. That's the DCJS number for New York standard  
5 incident report.

6 Q. Okay. So this is not the standard incident; this  
7 is something else?

8 A. This is a supplemental to that report. Although  
9 I didn't have it at the time, that would be the  
10 -- that's our general standard incident report  
11 that goes to the media that -- all that stuff.

12 Q. Did someone ask you to fill out this report?

13 A. No.

14 Q. How did you know there already was a different  
15 standard report?

16 A. I didn't. I just made the assumption that there  
17 was going to be one, and this was going to be a  
18 supplemental to that report. Whether it had been  
19 filled out or not, or ultimately this was going  
20 to be an attachment of that report. At some  
21 point whether eventually or not it was going to  
22 be completed.

23 Q. You mentioned before that you had been contacted  
24 by Sergeants White and/or Bornt around the time

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1           that you did another written report?

2       A.    Yes.

3       Q.    I'm going to show now a document that's marked  
4           Dean 2. Let me know if this is the other report.

5       A.    Yes.

6       Q.    Did you in fact sign the other report?

7       A.    Doesn't looks like I did.

8       Q.    But you filled this report on or about April  
9           21st, 2016?

10      A.    Yes.

11      Q.    This second report, which is marked as Dean 2,  
12           indicate -- you know what, can you read the  
13           first. Do you mind?

14      A.    "At the request of Sergeant White and Sergeant  
15           Bornt, I am clarifying my previous TPD 120  
16           originated on 4/17/2016."

17      Q.    So going back to Document 1, which is still in  
18           front of you, which part of the Dean 1 is being  
19           clarified, which sentence or sentences?

20      A.    I guess it would be, "I headed over to the  
21           driver's side of the suspect vehicle or where  
22           Captain Montanino was and the suspect was  
23           grabbing at Captain Montanino's legs, clarifying  
24           my route to how I got there.

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1 Q. Who asked you to clarify that route?

2 A. Sergeant White and Sergeant Bornt.

3 Q. Why?

4 A. I got -- I wasn't told why exactly. I made an  
5 inference of why, but I wasn't told why.

6 Q. Well, if you have belief as to why, please tell  
7 me.

8 A. It was my understanding that they were trying to  
9 confirm whether Captain Montanino's vehicle was  
10 up against Mr. Thevenin's vehicle, or if there  
11 was an area in between.

12 Q. Okay. But you were coming from the other side  
13 anyway; correct? You weren't coming around  
14 Montanino's vehicle to get to Thevenin's car;  
15 correct?

16 A. Well, that was their question.

17 Q. I'm asking you: You were not coming around it;  
18 right?

19 A. No, I did not. But when they asked me, I didn't  
20 know. That is what they asked me: How did you  
21 get from your patrol vehicle to the driver's side  
22 of Mr. Thevenin's car? They said, Did you go  
23 around in between the two cars, or did you go  
24 around the rear of Captain Montanino's car?

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1 Q. And you answered them what?

2 A. I didn't know.

3 Q. Okay. As we sit here today, you testified that  
4 you went in between, not around; correct?

5 A. Yes.

6 Q. There's also something here about -- can you read  
7 out loud the last sentence in Dean 2 where it  
8 begins "also."

9 A. "Also, I approximate that suspect vehicle was  
10 moved about six inches backwards from TPD Vehicle  
11 30 -- Sergeant French."

12 Q. Away from TPD vehicle; right?

13 A. Yes.

14 Q. And was this something else they asked you to put  
15 in?

16 A. I don't recall. I don't recall.

17 Q. Had you already spoken to the district attorney's  
18 office or to the district attorney himself even  
19 before you prepared this report?

20 A. I don't know. I'm not sure of the order of that.

21 Q. Do you know which day you testified before the  
22 grand jury?

23 A. I don't.

24 Q. Okay. April 17th was a Sunday; right?



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1 A. Yes.

2 Q. You had looked at it on your phone in order to  
3 clarify it?

4 A. Yes.

5 Q. April 21st then would have been Thursday;  
6 correct?

7 A. Yes.

8 Q. Do you know which day you testified before the  
9 grand jury?

10 A. I do not.

11 Q. Let's take a look please Dean 3. Take a look at  
12 it, and let me know when you're done.

13 MR. TORCZYNER: Off the record.

14 (An off-the-record discussion was held.)

15 BY MR. TORCZYNER:

16 Q. So I had asked you to take a look at the document  
17 marked Dean Exhibit 3, and you looked it over and  
18 took a quick break for the facilities.

19 Do you see on the page of the document  
20 marked page 3 of 5, that there's a circle on the  
21 back of suspect?

22 A. Yes.

23 Q. Who drew that?

24 A. I did.

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1 Q. Does that refresh your recollection as far as  
2 where you struck Mr. Thevenin with the baton?

3 A. No.

4 Q. Do you remember drawing the circle?

5 A. Yes.

6 Q. But you just don't remember, as we sit here  
7 today, that that's where you struck him?

8 A. I mean, it's a big area. I don't know. You  
9 know, I don't know specifically, no.

10 Q. You're right. I mean, the area extends from  
11 midway down the back of his head to almost  
12 two-thirds of the way down his back and both of  
13 his shoulders.

14 A. Exactly.

15 Q. So somewhere in this circle is the area where you  
16 made the contact?

17 A. Yes.

18 Q. It says suspect factors on page 2?

19 A. Yes.

20 Q. You see it indicates Mr. Thevenin was six-two,  
21 255?

22 A. Yes.

23 Q. Where did you get that information from?

24 A. I don't know. I believe Sergeant McMahon had

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1 given me the information, the name of  
2 Mr. Thevenin, and I don't know where I got that  
3 from.

4 Q. Okay. There is an indication there, verbal  
5 commands, on page 319, the same page that has  
6 six-two, 255. Do you see that?

7 A. Yes.

8 Q. What verbal commands did you give?

9 A. Stop moving.

10 Q. Were the verbal commands before or after you  
11 struck him with the baton?

12 A. Before and after. Before and after.

13 Q. If you gave verbal commands without using a  
14 baton, would you be filling this report to  
15 resistance report?

16 A. No, probably not.

17 Q. If you turn please to the page that's been marked  
18 321 at the bottom, and I'll represent to you that  
19 these numbers are provided by the lawyers, so you  
20 don't have worry about what the numbers means for  
21 significance. It's just to let us read it.

22 There's a signature there on the bottom. Is that  
23 your signature?

24 A. Yes.

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1 Q. Do you normally sign PT something Dean?

2 A. PTLM, yes.

3 Q. Do you normally sign Patrolman Dean?

4 A. Generally, yes.

5 Q. It's dated April 21, 2016. Do you see that?

6 A. Yes.

7 Q. Is that you who dated that?

8 A. Yes.

9 Q. Did you prepare this before or after the  
10 supplemental report that's Number 2?

11 A. I don't recall.

12 Q. Did you fill out this report that's Dean 3 before  
13 or after you spoke with Sergeant White?

14 A. I don't know. It was after I had --  
15 Sergeant White had called me earlier that day to  
16 let me know he was going to be there to meet with  
17 me. It was after that speaking with him. But I  
18 don't know -- there was no contacts in that phone  
19 call. I don't know whether it was after our  
20 meeting upstairs or before.

21 Q. In telling -- withdrawn.

22 The response to resistance narrative, which  
23 is on that page, page 321, can you read out loud  
24 the first sentence, please.

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1 A. "In reference to the subject, when I got to the  
2 driver's side of the suspect's vehicle, he was  
3 laying facedown on the ground with both arms  
4 moving."

5 Q. Stop please. I know it's a comma, not a period.  
6 I just need you to stop there.

7 A. Yes.

8 Q. As you read this, does this refresh your  
9 recollection that both of his arms were moving,  
10 or do you still believe it was only one.

11 A. I, at this point, only remember the one.

12 Q. Okay.

13 A. I realize that I wrote this, and this was much  
14 closer to the time of when it happened. As it  
15 sits right now, I only remember the one.

16 Q. The questions today are to the best of your  
17 recollection. If you could please read what  
18 would be the next sentence, even though it's  
19 after the comma.

20 A. "He was grabbing at Captain Montanino's leg. I  
21 told him not to move, and he continued to grab at  
22 Captain Montanino. I used my collapsible baton  
23 to strike the subject in the upper body one time,  
24 and told him again not to move. Both of his

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1 hands dropped to the ground immediately."

2 Q. Okay. This indicates grabbing at  
3 Captain Montanino's leg. Did you mean the pant  
4 leg, or does this indicate to you that you  
5 actually thought it was the leg?

6 A. Again, what I picture now is I see the -- the  
7 hand and the pant leg is what I see when I think  
8 about it now.

9 Q. Okay. Turn to the last page of the report,  
10 please. This report is signed off by whom?

11 A. Captain Montanino.

12 Q. Were you present when he signed off on this?

13 A. Not that I recall.

14 Q. Did anyone ask you questions about this report  
15 other than me?

16 A. Not that I recall.

17 Q. Are there any prior versions of this report?

18 A. Not that I recall.

19 Q. Did you have anything handwritten that you used  
20 to assist you in preparing this report?

21 A. I remember that I handwrote Mr. Thevenin's name  
22 on a scrap piece of paper, but that was it.

23 Q. Are there any prior versions of any of the other  
24 reports that we looked at today, Dean 1 and Dean

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1 2?

2 A. Not that I'm aware of, no.

3 Q. Okay.

4 (An off-the-record discussion was held.)

5 BY MR. TORCZYNER:

6 Q. I'm going to show you now a document that's  
7 marked Montanino 8. Take a look at it, and let  
8 me know when you're done.

9 A. Yes.

10 Q. Have you seen this document before?

11 A. No.

12 Q. Have you seen this picture before?

13 A. No.

14 Q. Do you see your vehicle in the picture?

15 A. No.

16 Q. Can you put the picture down so we can all look  
17 with you.

18 A. Sorry.

19 Q. Thanks. No problem. Do you see the vehicle that  
20 you now know as Edson Thevenin's vehicle?

21 A. Yes.

22 Q. Is the Thevenin's vehicle in the same position it  
23 was in when you first observed it that evening?

24 A. With the exception of the amount that we moved

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1 it, it appears to be.

2 Q. So it's the same angle, but just not as close to  
3 the French car?

4 A. I would say that's accurate.

5 Q. Okay. And the French is the police Vehicle 30  
6 that's in this picture?

7 A. Yes.

8 Q. Did you see any other police vehicles in this  
9 picture?

10 A. I see the tail end of one.

11 Q. Do you know which vehicle that is?

12 A. No.

13 Q. Show you another picture that's been marked as  
14 Montanino 10. Take a look at it, and let me know  
15 when you're done, please. And again I'll ask you  
16 to leave it down on the table just so that  
17 learned counsel can see it, and I can see it  
18 also. Thanks.

19 Do you see the Thevenin vehicle in this  
20 picture?

21 A. Yes.

22 Q. Do you see the Montanino vehicle in this picture?

23 A. Yes.

24 Q. Okay. The Montanino vehicle is on the left side



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1 of the page?

2 A. Yes.

3 Q. An unmarked Troy City Police Department vehicle?

4 A. Yes.

5 Q. Is the Montanino vehicle in the same position  
6 that it was in relative to the Thevenin vehicle  
7 that night?

8 A. I don't believe so.

9 Q. You think it's been moved back quite a bit?

10 A. I feel that way, yes.

11 Q. Okay. And the front two vehicles, the Thevenin  
12 vehicle and the French vehicle, are in the same  
13 positions they were in, just moved back slightly?

14 A. It appears that way, yes.

15 Q. And the last question on pictures. I show you  
16 now a picture marked Montanino 11. Take a look  
17 at it and let me know when you're done, please.

18 Have you seen this picture before?

19 A. No.

20 Q. Okay. And I didn't ask you this, but the other  
21 picture that you saw, Montanino 10, have you seen  
22 that one before?

23 A. No.

24 Q. I know that the picture is a little bright on the

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1 police vehicle and a little dark on the Thevenin  
2 vehicle, but I'll draw your attention to the  
3 French vehicle. Is the door of the French  
4 vehicle in the same position it was in when you  
5 first saw -- withdrawn.

6 Is the driver's side door of the French  
7 vehicle in the same position it was in when you  
8 arrived on the scene?

9 A. I don't remember if it was open or closed.

10 Q. Did you notice when you first saw Randy French  
11 that night whether any part of his body was  
12 inside the car?

13 A. No.

14 Q. Did you see Randy French's service weapon when  
15 you first saw him?

16 A. No.

17 Q. Did you ever see Randy French's service weapon?

18 A. Not until I collected it at the hospital.

19 Q. How did it get to the hospital?

20 A. Him.

21 Q. It was on his belt when he was taken by you to  
22 the hospital?

23 A. Yes.

24 Q. Do you recall when you transported Randy French

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1 along with Officer Parker into your vehicle, do  
2 you recall whether Randy French's service weapon  
3 was in its holster?

4 A. It was.

5 Q. This is the last picture I'm going to show you,  
6 which is Montanino 9. Have you ever seen this  
7 picture before?

8 A. No.

9 Q. Do you see your vehicle in this picture?

10 A. No.

11 Q. Yet you didn't see your vehicle in any of these  
12 pictures --

13 A. No.

14 Q. -- correct?

15 A. No.

16 Q. In all likelihood probably because these pictures  
17 were taken after you left the scene; right?

18 A. I'm sure well after I left the scene, yes.

19 Q. Did you ever talk to Sergeant Montanino about  
20 what happened that night afterwards?

21 A. Not really.

22 Q. Not really doesn't really answer --

23 A. Yes.

24 Q. What do you recall about conversations with

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1 Sergeant Montanino about the events that took  
2 place that night?

3 A. I don't remember anything specific. The majority  
4 of what we -- the majority of -- the gist of what  
5 I remember us talking about was we both kind of  
6 thought the same thing in reference to Randy's  
7 injuries.

8 Q. What did Sergeant Montanino tell you -- or  
9 Captain Montanino tell about you Randy's  
10 injuries?

11 A. We were just both surprised that the injuries  
12 were -- the injuries were so minimal. He had  
13 said he thought the same -- you know, the same  
14 that I thought that it was more of a -- the pinch  
15 point was further up the body than where it was.

16 Q. Where did you originally think the pinch point  
17 was?

18 A. I assumed it was somewhere in his hip area.

19 Q. And what did you learn later?

20 A. It was down near his knee.

21 Q. And Captain Montanino also had that same initial  
22 view, and was surprised by the result?

23 A. I just remember when I got back from the hospital  
24 he was still there, and I had said something. I

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1           said, You know, we lucked out with the injuries,  
2           and Sergeant French it was -- they were minimal.  
3           I remember him saying, you know, I can't believe  
4           that. That's not what it looked like to me, type  
5           of thing. That was really the extent of it.

6           Q. Did you ever learn what Sergeant French's injury  
7           was?

8           A. The night of the hospital I could have told you.  
9           I'm not sure exactly what it was now.

10          Q. Did they tell you that he broke any bones?

11          A. I believe they said that he didn't.

12          Q. Did not?

13          A. Did not.

14          Q. When you were transporting Sergeant French to the  
15          hospital, did you notice whether he was bleeding  
16          from any part of his body?

17          A. I didn't. I didn't notice.

18          Q. Did you notice any blood on Sergeant French's  
19          uniform?

20          A. I didn't.

21          Q. Well, I'm going to ask you: Was there blood on  
22          any part of his uniform?

23          A. Not that I ever came across.

24          Q. Sergeant French return to duty yet?

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1 A. No.

2 Q. Have you spoken to Sergeant French after the  
3 night at the hospital?

4 A. Yes.

5 Q. Have you asked Sergeant French when he's going to  
6 return to duty?

7 A. Yes.

8 Q. What's the response that he gave you?

9 A. I doesn't really know, from what he tells me.

10 Q. All right. Let's talk about the conversations  
11 when you were taking him to the hospital.

12 You indicated that you were talking to him  
13 to try -- to try to get his mind off what was  
14 going on; correct?

15 A. Uh-huh.

16 Q. What do you recall saying to him, and him  
17 responding to you?

18 A. I remember him saying to me that I didn't need to  
19 super rush to the hospital, that he wasn't that  
20 hurt, which I didn't believe. I remember him  
21 saying -- that was when I said, you know, pepper  
22 spray the guy, I just it got all in my eye.

23 Q. And what did he respond to you?

24 A. He said, Yeah, I had to shoot him. I said, You

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1           did? I didn't know. That was the first that I  
2           had heard of any shots fired, any -- that was the  
3           first I learned of that.

4       Q.   Okay. You said you did, and what did he respond  
5           to you?

6       A.   He said, Yeah, he wouldn't -- he wouldn't stop.  
7           He wouldn't stop coming. He wouldn't stop the  
8           car.

9       Q.   Did he say he wouldn't stop coming, he wouldn't  
10          stop the car, or is that a paraphrase?

11      A.   Yes, it's a paraphrase.

12      Q.   Do you remember specifically what Sergeant French  
13          said?

14      A.   I don't.

15      Q.   Did you ask him how many shots he fired?

16      A.   I didn't.

17      Q.   Did you ask him how many volleys of fire there  
18          were?

19      A.   I didn't.

20      Q.   Did you ask him whether Thevenin had a gun  
21          himself?

22      A.   I didn't. As soon as he said that I switched the  
23          conversation to maybe we should -- before you get  
24          any x-rays and this and that, I said, Why don't

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1           you call your wife before, you know, two police  
2           officers knock at her door at whatever time it  
3           was. So he called his wife said that he was  
4           fine, but she needed to get some clothes and come  
5           to Albany Medical. And that was basically the  
6           extent of our car conversation.

7           Q. Did you hear him mention to his wife that he had  
8           fired shots?

9           A. No, I remember the conversation being brief. I  
10          don't remember that, no.

11          Q. Did you ever learn -- withdrawn.

12                 When did you learn that Thevenin died that  
13          night?

14          A. While we were at the hospital.

15          Q. So when you were transporting Randy French to the  
16          hospital you didn't know yet that Thevenin was  
17          dead?

18          A. I didn't.

19          Q. How did you find out that he died?

20          A. I was on the phone -- I don't remember who I was  
21          talking to, but somebody was giving me  
22          instructions to make sure I got all  
23          Sergeant French's equipment, clothing, everything  
24          that he had on him, I needed to bag up and secure



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1 for an evidence technician to take.

2 Q. Who was the evidence technician?

3 A. There ended being several. I ended up turning  
4 all of the clothing that I had over to  
5 Officer Furciniti.

6 Q. Did you ever talk to Sergeant French later about  
7 the shooting, or was it only when you were in the  
8 car?

9 A. Really just in the car.

10 Q. Sergeant French the first officer that you knew  
11 who had fired his weapon on duty?

12 A. With the exception of animals, yes.

13 Q. So I'll make the question clearer:

14 Is Sergeant French the first person you know  
15 who ever shot a person?

16 A. Yes.

17 Q. And you didn't have any questions for him about  
18 the shooting?

19 A. No.

20 Q. Was that because you were worried for him?

21 A. No, something very similar to if a cop has an  
22 incident, take him to Albany Med. It's the same  
23 from the academy with that, that if a cop has an  
24 incident you don't want them to be asking

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1 questions, you don't to want ask questions, you  
2 don't want to know. So, again, that's what I  
3 did.

4 Q. All right. So we have the next contestant  
5 present with the video that you had mentioned  
6 previously.

7 A. Yes.

8 Q. I'm going to ask you to take a look at something  
9 that has been marked for our discovery purposes  
10 as Exhibit 9.

11 (Playing video recording.)

12 Q. Let me know when you see yourself in the video.

13 A. (Indicating.)

14 Q. Back this up. We've already gotten beyond it?

15 A. Yes.

16 Q. We're already at 15, and I've gotten beyond it.  
17 So we're now at approximately seven seconds in  
18 the video, and there's someone standing alongside  
19 what appears to be Thevenin's driver side door.  
20 Is that you?

21 A. No.

22 Q. Okay. I'm going to hit play again. Let me know  
23 -- you can see the numbers running here on the  
24 bottom when you see yourself.

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1 (Playing video recording.)

2 Q. Is that you now at ten seconds right by the door?

3 A. No, I'm on the far side of the vehicle.

4 Q. So you're pointing to the passenger side of the  
5 vehicle?

6 A. Yes. In that frame we were just in --

7 Q. Yes.

8 A. -- you see my face behind on the other side of  
9 the vehicle.

10 Q. Okay. So you're on the passenger side of the  
11 vehicle in between the vehicle and not only -- it  
12 looks almost like another police vehicle --

13 A. That's my police vehicle.

14 Q. That's your police vehicle?

15 A. Yes.

16 Q. Okay. So you're not -- at this point, you're not  
17 in between the Thevenin vehicle and the French  
18 vehicle; you're between the Thevenin vehicle and  
19 your own vehicle?

20 A. Correct. I'm running. I'm behind, it looks like  
21 the -- I would be on the passenger side rear door  
22 of the Thevenin vehicle right now. You see my  
23 head right there, and I'm running this way.

24 Q. Now, it appears that you're running backwards

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1           towards the Montanino vehicle; correct?

2       A.    Yes.

3       Q.    And in about a second we're going to lose  
4           everything in this video?

5       A.    Right.

6           (Playing video recording.)

7       Q.    And that's the sum total of what you see yourself  
8           in this video; correct?

9       A.    Correct. And that's where that report comes  
10          from.

11          (An off-the-record discussion was held.)

12   BY MR. TORCZYNER:

13       Q.    So you were shown this video now, and you were  
14           previously shown it one time, at least, by  
15           Sergeant White --

16       A.    Yes.

17       Q.    -- or Sergeant Bornt?

18       A.    Yes.

19       Q.    What do you recall about your conversations with  
20           Sergeant Bornt and White when you were shown that  
21           video?

22       A.    They asked me if I could clarify my route from my  
23           vehicle to the driver's side of Thevenin's  
24           vehicle, and I said I couldn't. They asked me to

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1 watch this video and see if that helps me clarify  
2 that, which I could clearly see myself running  
3 between Thevenin's vehicle and Captain  
4 Montanino's vehicle to that side.

5 Q. Were you ever asked to appear before the Troy  
6 version of internal affairs?

7 A. Regarding this?

8 Q. Yes.

9 A. No.

10 Q. Okay. If were you asked to appear in front of  
11 the Troy Internal Affairs on something else, I'm  
12 not inquiry about that. It's all relating to  
13 this.

14 A. No.

15 Q. Did you know whether Troy conducted, the City of  
16 Troy Police Department, conducted an  
17 investigation separate and apart from the  
18 district attorney's presentation to the grand  
19 jury?

20 A. From what I understand, it was not the Internal  
21 Affairs Division; it was just the Detective  
22 Bureau.

23 Q. And that was Sergeant Bornt and Sergeant White?

24 A. Yes.

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1 Q. And you have not been contacted by the Attorney  
2 General's Office; correct?

3 A. Correct.

4 Q. Did you see Phil Gross in that video?

5 A. I didn't. I was under the impression he was  
6 taking that video.

7 Q. Ever talk to Phil Gross about the events that  
8 took place that night?

9 A. No.

10 Q. Did you ever talk to Phil Gross about the video  
11 itself?

12 A. I have never spoken to Phil Gross ever.

13 Q. There's more than one Phil Gross; right?

14 A. I don't know.

15 Q. Okay. Did you know there's a Phil Gross the dad,  
16 and Phil Gross the son?

17 A. I did not.

18 Q. Okay. Then you didn't know. The Phil Gross, the  
19 tow truck driver, that's the one that we're  
20 talking about that you've heard of; correct?

21 A. I hadn't heard of him until this -- yes, until  
22 this night, yes.

23 Q. Okay. But when you say "this night," you're not  
24 talking about the 14th of August?

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1       A.    No.  The 17th, right.  And even then, I still  
2            don't -- I mean, I couldn't pick this person out.  
3            I have no idea what they look like.

4            MR. TORCZYNER:  I thank you for coming down  
5            today.

6            THE WITNESS:  No problem.

7            (Whereupon, the examination of  
8            DAVID DEAN, in the above-entitled  
9            matter was concluded at 12:10 p.m.)  
10  
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(EXHIBITS RETAINED BY NEIL TORCZYNER, ESQ.)



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1 STATE OF NEW YORK )  
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SS:  
COUNTY OF )

I, DAVID DEAN, have read the foregoing record of my testimony taken at the time and place noted in the heading hereof, and I do hereby acknowledge it to be a true and accurate transcript of same.

David Dean

DAVID DEAN

DATED:

17<sup>th</sup> September, 2018Sworn to before me this 17<sup>th</sup>day of September, 2018

Kathryn M. Vanderschuer

Notary Public

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## C E R T I F I C A T I O N

I, MICHELE AMBROSINO, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby CERTIFY that prior to being examined, the witness named in the foregoing deposition was duly sworn to testify the truth, the whole truth and nothing but the truth.

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced by me to typewritten form and that the same is a true, correct and complete transcription of said proceedings.

Before completion of the deposition, review of the transcript was requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not interested in the outcome of this matter.



MICHELE AMBROSINO  
Court Reporter

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File #: 11166-0001

Title: Cinthia Thevenin, et al. v. City of Troy, et al.

Examination Before Trial of: David Dean

TRANSCRIPT CORRECTION SHEET

Page Line


19 13

Correction and Reason for Correction:

MAYOR WAS PATRICK MADDEN, AFTER  
DEPOSITION, I RECALLED THE MAYOR RESPONDING  
TO AGENCY CEO.

  
Signature of Deponent

Sworn to before me this 17<sup>th</sup>  
day of September, 2022

  
Notary Public - State of New York

KATIE M. VANDETTA  
Notary Public, State of New York  
No. 01VA6372564  
Qualified in Saratoga County  
Commission Expires March 19, 2022

FITZGERALD MORRIS BAKER FIRTH P.C.

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT COURT OF NEW YORK

3 CINTHIA THEVENIN, individually, and as wife of  
4 EDSON THEVENIN, Decedent, and as Administratrix of  
5 the Estate of EDSON THEVENIN, and as mother and  
6 natural guardian of Infant N.T., and as mother and  
7 natural guardian of Infant Z.T.,

8 Plaintiffs,

9 -against-

10 Index No.  
11 16-CV-1115 (NAM/DJS)

12 THE CITY OF TROY and SERGEANT RANDALL FRENCH,

13 Defendants.

14 STENOGRAPHIC MINUTES OF DEPOSITION conducted of  
15 KEITH MILLINGTON, pursuant to Subpoena, on the 16th day  
16 of November, 2017, at the law offices of Fitzgerald  
17 Morris Baker Firth, 16 Pearl Street, P.O. Box 2017, Glens  
18 Falls, New York, commencing at 1:10 p.m.; before MICHELE  
19 AMBROSINO, a Shorthand Reporter and Notary Public within  
20 and for the State of New York.  
21  
22  
23  
24

1 APPEARANCES:

2 On behalf of Plaintiffs:

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18 ALSO PRESENT:

19 SEAN MILLINGTON  
20  
21  
22  
23  
24

1 IT IS HEREBY STIPULATED AND AGREED by and  
2 between the attorneys for the respective parties herein,  
3 that filing and sealing be and the same are hereby  
4 waived.

5  
6  
7 IT IS FURTHER STIPULATED AND AGREED that all  
8 objections, except as to the form of the question, shall  
9 be reserved to the time of the trial.

10  
11  
12 IT IS FURTHER STIPULATED AND AGREED that the  
13 within deposition may be signed and sworn to before any  
14 officer authorized to administer an oath, with the same  
15 force and effect as if signed and sworn to before the  
16 Court.



1 KEITH MILLINGTON,

2 (first duly sworn by the Notary Public,

3 was examined and testified as follows:)

4 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

5 BY MR. TORCZYNER:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. My name is Neil Torczyner. I am an attorney with  
9 the law firm of Harfenist, Kraut & Perlstein. We  
10 along with the law firm of Hack & Rose represent  
11 the former wife of Edson Thevenin. Her name is  
12 Cinthia Thevenin, and we filed a lawsuit against  
13 the City of Troy and Sergeant Randal French.

14 The gentleman seated on the end of table  
15 represents the City of Troy and Sergeant Randal  
16 French. I had previously served a subpoena on an  
17 attorney with Kindlon Law Firm, and he had agreed  
18 to accept it on your behalf and that's what's  
19 bringing you here today. I'm going to be asking  
20 you some questions. When I'm done the gentleman  
21 who represents the defendants will be asking you  
22 some questions as well. Unfortunately, we can't  
23 answer questions really. It's our job just to  
24 ask you questions.

—KEITH MILLINGTON - 11/16/17—

1           You've brought your brother with you, and as  
2           long he has no personal knowledge of things we're  
3           going to be asking about, it's perfectly fine if  
4           he stays. If at any point you don't understand  
5           the question I'm asking you you got to let me  
6           know, because since you're sworn to tell the  
7           truth, we're going to assume that everything  
8           you're saying is true. And if you didn't  
9           understand what I meant when I asked you  
10          something, well, you're going to give an answer  
11          that's not true and it may not be your fault, but  
12          it still won't be true.

13          If at any point you need a break to go to  
14          the bathroom, feel free to do so. There's coffee  
15          and water on the table if you want to have a  
16          drink. Of course you're welcome to do that, you  
17          know, stretch your legs, whatever it is. You can  
18          do whatever during a break you want. You just  
19          need to let us know that you need a break since  
20          you don't have a lawyer here with you. And you  
21          can't take a break while there's a question. If  
22          I ask you a question, you need to answer it  
23          before we take whatever break it is you need.  
24          But other than that, those are the basic

—KEITH MILLINGTON - 11/16/17—

1 instructions that I'm going to give you.

2 The young lady seated to your immediate left  
3 is taking everything down on a piece of equipment  
4 that stenographers use. It will in the end  
5 create a booklet of your testimony. It's  
6 important that when you answer a question that  
7 you answer verbally because she can't take down  
8 shrugs of the shoulders, nods of the head, and  
9 things like "huh-huh" or "unh-unh" don't really  
10 come out very well either.

11 A. Okay.

12 Q. Those are the basic instructions that I'm going  
13 to give you. It's possible that before -- when  
14 John asks you questions, he may give you  
15 instructions. You'll obviously listen to them as  
16 well.

17 Do you understand those instructions that  
18 I've given you?

19 A. Yeah.

20 Q. Are you under the influence of anything that  
21 would prevent you from understanding my questions  
22 and answering them?

23 A. No.

24 Q. The first thing that I'm going to do is I'm going

—KEITH MILLINGTON - 11/16/17—

1 to show you a document that's a subpoena that I  
2 signed on November 1st. And we're going to mark  
3 this with your last name and a number, and that  
4 way when we go through our documents, we'll know  
5 which documents relate to your deposition  
6 transcript.

7 (Millington Exhibit 1 was marked for  
8 identification.)

9 Q. I'm going to show a document that is marked as  
10 Millington 1. Let me know if you've ever seen  
11 this before.

12 A. No, I've never seen this before.

13 Q. Were you advised by a lawyer that you should come  
14 here today?

15 A. Yes.

16 Q. And who was that lawyer?

17 A. Lee Kindlon.

18 Q. I'm going to tell that I spoke with a fellow -- I  
19 don't know if he goes by Gennaro [ph.]?

20 A. Yeah, Gennaro. Yep.

21 Q. Right. So he was the one who accepted that on  
22 your behalf, and that's what brings you here  
23 today.

24 Did Lee discuss with you -- and I don't want

—KEITH MILLINGTON - 11/16/17—

1 to know exactly the conversations, but were you  
2 aware that Lee's office was accepting the  
3 subpoena that would bring you here today?

4 A. Yes.

5 Q. So besides coming here as a witness under a  
6 subpoena, there's also a fee that you get paid  
7 based upon the miles between the distance of  
8 where you're coming from and where you're going  
9 to. Is the address that's listed there your  
10 correct home address?

11 A. Correct.

12 Q. Okay. And the address, 16 Pearl Street, I will  
13 represent to you is the address where you are.  
14 So I'm handing you now -- we're not marking it as  
15 an Exhibit, but it's a check for \$86 that's  
16 payable to you that reimburses you, not for  
17 testifying. We're not paying you to testify, but  
18 we are reimbursing you for the mileage to get  
19 from your home here and back to where you're  
20 coming from. And that's yours. You can do with  
21 it as you wish.

22 Have you ever testified in a deposition  
23 before?

24 A. No.

—KEITH MILLINGTON - 11/16/17—

1 Q. Have you ever testified in court?

2 A. Nope.

3 Q. What's your date of birth?

4 A. [REDACTED]

5 Q. And the address that is listed on the subpoena as  
6 your home address at [REDACTED] in Cohoes,  
7 how long have you lived there?

8 A. About two years.

9 Q. Were you living there in April of 2016?

10 A. Correct; I was.

11 Q. Who else was living there April of 2016?

12 A. My dad, my mom, my little brother, and my little  
13 sister.

14 Q. Little brother's the guy sitting next to you?

15 A. Yep.

16 Q. What's your dad's name?

17 A. Keith.

18 Q. Do you ever go by something else besides Keith as  
19 a nickname?

20 A. I mean, my parents call me Keiffer. That's about  
21 it.

22 Q. Okay. Would you prefer that we call you Keiffer  
23 or Keith?

24 A. No, call me Keith.

—KEITH MILLINGTON - 11/16/17—

1 Q. Okay. What's your mom's name?

2 A. Valerie.

3 Q. And what's your brother's name, since he's here?

4 A. Sean.

5 Q. And your sister's name?

6 A. Kersten.

7 Q. At some point before you came here today did you  
8 discuss -- withdrawn.

9 Were you present when there was a shooting  
10 on the Collar City Bridge?

11 A. Correct; I was.

12 Q. Did you ever discuss the shooting on the Collar  
13 City Bridge with any member of the Troy Police  
14 Department?

15 A. No, I told -- I talked to a Troy police that I  
16 said that I seen it. I didn't say any details  
17 about it.

18 Q. Okay. Who was the Troy police officer that you  
19 told that you had seen the shooting?

20 A. Colleen Goldstein.

21 Q. And you exchanged text messages with her telling  
22 her that you saw the shooting?

23 A. Correct.

24 (Millington Exhibit 2 was marked for

—KEITH MILLINGTON - 11/16/17—

1 identification.)

2 Q. I'm going to show you now a document that's  
3 marked Millington 2. I will tell you that these  
4 text messages were given to us by the Troy Police  
5 Department. Just take a quick look through this,  
6 and tell me if you've seen them before.

7 A. Uh-huh.

8 Q. Yes, you've seen them before?

9 A. Yeah.

10 Q. And these are your text messages that you  
11 exchanged with Colleen Goldstein?

12 A. Correct.

13 Q. How do you know Colleen?

14 A. She's a family friend. One of my dad's good  
15 friend, Travis, dated her daughter that passed  
16 away. So I mean, we're real close with Colleen.

17 Q. And the reason it says "Keiffer" across the top  
18 is because your dad got you the phone?

19 A. Well, she's a family friend so she knows that  
20 they call me Keiffer, so that's probably her  
21 contact in her phone.

22 Q. That's the way you're contacted in her phone?

23 A. Yeah.

24 Q. On your phone it doesn't say that?



—KEITH MILLINGTON - 11/16/17—

1 A. No.

2 Q. Okay. What's the 75 that you got a 75 on on the  
3 first page of this document?

4 A. The first time I took the Troy test I got a 75 on  
5 it.

6 Q. And the test is to be a Troy police officer?

7 A. Correct.

8 Q. And you were in the process or still are in the  
9 process of applying to be a Troy police officer?

10 A. Yes. I took the new exam that -- the recent one.

11 Q. Have you ever been notified by the Troy Police  
12 Department that you've been accepted to be a  
13 police officer there?

14 A. No.

15 Q. When is the first time you applied to be a police  
16 officer there?

17 A. Not sure of the date of the test.

18 Q. Okay. So the shooting that you saw was April of  
19 2016; right?

20 A. Uh-huh.

21 Q. And about two or three weeks before you texted  
22 Colleen about your test results?

23 A. Yes.

24 Q. Was that the first time you took the test?

—KEITH MILLINGTON - 11/16/17—

1 A. Yes.

2 Q. Okay. So the first time you took it was sometime  
3 before --

4 A. It was probably a few months before that because  
5 it takes a while to get your results back.

6 Q. Have you ever applied to be a member of any other  
7 law enforcement agency?

8 A. I just took the state trooper exam. I took the  
9 Albany police exam, and I am taking the  
10 Rensselaer County Sheriff on December 2nd.

11 Q. Good luck.

12 A. Thank you.

13 Q. Did you graduate from high school?

14 A. Yes, I did.

15 Q. Where did you go to high school?

16 A. Lansingburgh High School.

17 Q. When did you graduate?

18 A. 2012.

19 Q. Did you take any classes after high school?

20 A. Yeah, Hudson Valley.

21 Q. Do you have a degree from Hudson Valley?

22 A. I will pretty soon.

23 Q. What are you studying towards?

24 A. Criminal justice.

—KEITH MILLINGTON - 11/16/17—

1 Q. And that's going to be an AB?

2 A. It will be my bachelors -- or associates.

3 Q. Right. An associate's degree in --

4 A. Yeah.

5 Q. So this is a two-degree program?

6 A. Yep.

7 Q. Now, you probably have seen crime and legal  
8 dramas on TV, and you've studied some criminal  
9 work in the associate's program. I'm going to  
10 ask you to put aside in your head everything that  
11 you've seen on TV because clearly this is not a  
12 court room. There's no judge here. The purpose  
13 of this deposition is for us to understand what  
14 you saw. Again, I'm asking you questions. I was  
15 the one that asked you to come down here, but  
16 Mr. Aspland is going to ask you questions as  
17 well. And it's really just finding out the  
18 facts. We want to know what you saw and what you  
19 heard. Try not to think about what you see on TV  
20 because we're not looking for the bloody glove or  
21 anything else like that. We just want to know  
22 what it is that you've seen and that you've heard  
23 spoken to you.

24 When you saw the shooting that we're talking

—KEITH MILLINGTON - 11/16/17—

1           about on the Collar City Bridge, do you remember  
2           what time it was?

3           A.    It was about I believe 3:00 in the morning.    3  
4           a.m., somewhere around that time.

5           Q.    Where were you coming from at 3 a.m.?

6           A.    My friend had people over on Second Ave in Troy,  
7           and I was driving my friend home because he was  
8           intoxicated and he could not drive his Jeep,  
9           which was a standard.

10          Q.    A standard meaning, standard that he often was  
11          drunk?

12          A.    No, I standard meaning the truck -- the Jeep was  
13          a standard shift.

14          Q.    Okay.  Who's the friend who couldn't drive?

15          A.    Vince Laware.  He goes by Vinny, too.

16          Q.    Where does Vinny live?

17          A.    In Troy.

18          Q.    Do you know the address?

19          A.    No, not off the top of my head.

20          Q.    If I said 44 Bolivar Avenue, would that ring a  
21          bell?

22          A.    I mean, if that's by RPI and Troy High then,  
23          yeah.

24          Q.    Okay.  I don't know that it's correct where he

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1 lives. That's just an address that I'm asking if  
2 you know if that's where he lives.

3 Who else was at this party with you and  
4 Vinny?

5 A. There was a bunch of people I can't name off the  
6 top of my head.

7 Q. Where was the party?

8 A. Second Avenue in Troy and 101st.

9 Q. And when you left the party you were the  
10 designated driver?

11 A. Correct.

12 Q. You didn't have anything to drink that night --

13 A. No.

14 Q. -- did you? Good for you. And you answered, no,  
15 you did not have anything to drink?

16 A. No, I did not have anything to drink.

17 Q. What time did you leave the party?

18 A. I don't know the exact time.

19 Q. Who else was in car with you and Vinny?

20 A. Me and Vinny.

21 Q. Just the two of you?

22 A. Correct.

23 Q. Do you remember which route you drove when you  
24 left the party?

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1 A. We went down Second Avenue -- or I think they  
2 call it River Street. We got to the Hoosick  
3 Street Bridge, we took a left going up towards  
4 Hoosick Street between the Collar City Bridge,  
5 and we hit the light between the on- and  
6 off-ramp. I stalled out, and --

7 Q. You have a problem with driving standard?

8 A. It was like my second time.

9 Q. Okay. One other quick thing: If you and I were  
10 hanging out watching a ball game, it wouldn't be  
11 a big deal if we talked over each other because  
12 you know what I'm saying and I know what you're  
13 saying. But because the young lady is taking  
14 everything down, it's important that you wait for  
15 me to finish speaking --

16 A. All right.

17 Q. -- before you speak. And again, it's not that  
18 you're doing something wrong. You don't do this  
19 every day.

20 A. All right.

21 Q. And you're just getting into a rhythm, which is  
22 great, but it's important that you let me finish  
23 before you start answering.

24 A. All right. Sorry.

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1 Q. No problem at all. Okay. So the car was a  
2 stick, and it stalled out because you don't  
3 generally drive stick?

4 A. Correct.

5 Q. At the time that the car stalled out did you hear  
6 police sirens?

7 A. No.

8 Q. Did you see any police flashing lights at that  
9 point?

10 A. Nope.

11 Q. So what did you do next after the car stalled  
12 out?

13 A. Well, the light was still green when I stalled  
14 out. And then it ended up going red, and I was  
15 still stalling out, and that's when I seen a  
16 Honda come up with its lights off behind me in my  
17 rearview mirror. I kind of laughed and made a  
18 joke about because the dude was driving with his  
19 lights off. He went past us. That's when two  
20 cop cars were behind him with their lights on  
21 following behind him. And then he took a quick  
22 U-turn onto the bridge, and then hit the side of  
23 the wall.

24 Q. Okay. When you say "he took a quick U-turn onto

—KEITH MILLINGTON - 11/16/17—

1 the bridge," that's the driver of the Honda?

2 A. Correct.

3 Q. Could you see -- did you see the face of the  
4 driver of the Honda when he past you?

5 A. No.

6 Q. Did you see the face of the driver of the Honda  
7 when he made the U-turn onto the bridge?

8 A. Nope.

9 Q. About how fast was the driver of the Honda going  
10 when he made the U-turn onto the bridge?

11 A. I'm not sure of the exact speed, but I think he  
12 was going pretty fast because he came right up on  
13 the side of us.

14 Q. Okay. Have you ever had any kind of training in  
15 recognizing speeds of cars?

16 A. No. Nope.

17 Q. That's not part of the trooper's exam yet?

18 A. No.

19 Q. So he passes you, makes the U-turn around to get  
20 onto the bridge, and then at that point the two  
21 Troy police cars are behind him?

22 A. Yes. As soon as he turned behind me like -- when  
23 I could see him in my rearview mirror, as soon he  
24 turned that corner and was coming up, two cop



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1 cars were right behind him.

2 Q. Did you ever see any of the Troy police cars pass  
3 his car?

4 A. What do you mean?

5 Q. Well, when you're driving sometimes --

6 A. Yeah, like --

7 Q. -- cars pass you.

8 A. No, I didn't see him -- I didn't see him -- the  
9 cop cars go past him until he crashed into the  
10 wall.

11 Q. So at the time that he had crashed into the wall,  
12 the two Troy police cars were still behind him;  
13 correct?

14 A. Yes.

15 Q. Can you describe the Troy police cars?

16 A. White cruisers, four cruisers with Troy police on  
17 the side.

18 Q. Were both police cars marked cars?

19 A. Yes.

20 Q. Okay. So both of the cars that you saw following  
21 the Honda were white police cruisers?

22 A. Yes.

23 Q. Did they have their lights on?

24 A. Yes.

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1 Q. Did they have their sirens on?

2 A. Yes.

3 Q. What happened -- what did you see happen next  
4 after the Honda hit the wall on that bridge?

5 A. I seen the first cop car that was directly behind  
6 him pull in front of him at an angle, and then I  
7 seen the back cop car pull behind him to try to  
8 close him in.

9 Q. Okay. And did you hear the sounds of the  
10 collision when the Honda hit the wall?

11 A. Yes.

12 Q. How loud was it?

13 A. It was pretty loud.

14 Q. Did you see the Troy police officers who were  
15 driving those two vehicles when they passed you?

16 A. I mean, I didn't see their faces. I seen a  
17 figure driving a car.

18 Q. Okay.

19 A. It all happened fast, too.

20 Q. You're doing great, and the questions are to the  
21 best of your recollection.

22 Did you ever see a video of that night?

23 A. No.

24 Q. So this all based upon your memory?

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1 A. Correct.

2 Q. When the Honda hit the wall, which side of the  
3 Honda hit the wall?

4 A. The left side, front left.

5 Q. So we're talking about the driver's side?

6 A. Yep.

7 Q. Did it hit the wall at an angle, or was it  
8 straight parallel with the wall? Do you  
9 understand what I'm asking?

10 A. Yes, I'm thinking. I think it was at an angle.

11 Q. Okay. And then you indicated that one of the  
12 marked cruisers pulled in front of him?

13 A. Yes.

14 Q. And then it also was at an angle to the wall?

15 A. Yes.

16 Q. And the other police car, what did that car do?

17 A. Pulled behind him so he couldn't back up.

18 Q. Okay. Was that at an angle to the Honda, or was  
19 it directly behind it? Do you understand the  
20 question I'm asking you?

21 A. Yes. I believe it was directly behind it, maybe  
22 at sort of angle. I don't know.

23 Q. What was the distance, if you remember, between  
24 the Honda and the car behind it when he pulled

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1 behind him?

2 A. Probably about a few feet.

3 Q. So say less than ten feet?

4 A. Yeah, less than ten feet. Probably like a few,  
5 like one or two. Like two or three.

6 Q. Somewhere between one and three feet?

7 A. Yeah, enough to like you could pull -- parallel  
8 park and -- parallel park in between them if you  
9 wanted to.

10 Q. Parallel parking a car --

11 A. Yeah, I'm saying if you were parallel parking,  
12 you could parallel park between the two cars.

13 Q. Right. So if you were parallel parking a car  
14 between two cars, it would be one to three feet  
15 because a car length is longer than that; right?

16 A. If the car's here, it was three feet to -- about  
17 three feet behind him.

18 Q. Okay. And what was the distance between the car  
19 that was blocking the Honda in the front and the  
20 Honda, if you remember?

21 A. I'm not sure.

22 Q. Did you hear anybody using a loud speaker or a PA  
23 from the car at that point?

24 A. No.

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1 Q. What happened next after those two cars got into  
2 position, the positions you described?

3 A. The police officers got out of the car. The guy  
4 in the front -- the first officer got out of the  
5 car first. The guy was in front of him.

6 Q. Okay. Let's talk about the first officer. When  
7 you say the "first officer," you're talking about  
8 the car that was at an angle to the Honda?

9 A. Correct.

10 MR. ASPLAND: Are you talking front or back?

11 THE WITNESS: Front.

12 (Millington Exhibit 3 was marked for  
13 identification.)

14 Q. I'm going to show you now a picture that's been  
15 marked as Millington 3. Obviously, this was  
16 taken during daylight so it wasn't taken at 3:00  
17 in the morning when you saw it.

18 Is the police car in the picture that's  
19 white at the same angle that it was at when you  
20 saw it first pull in front of the Honda?

21 A. Yes, I believe so. But the other cars not there.  
22 There was another white car behind it, was there  
23 not?

24 Q. Well, I can't answer questions. But the

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1 questions are best of your recollection.

2 MR. TORCZYNER: John, bring your picture  
3 down. I think I gave you -- I want to make sure I  
4 gave you the right one so we're all on the same  
5 pages. Yeah, we're working off the same one.  
6 Okay.

7 Q. Is the Honda in the same position that it was in,  
8 or it is in a different position than when you  
9 first saw it against the wall on the bridge?

10 A. I mean, that's not him hitting the wall, but  
11 that's him -- that's after -- that's how it was I  
12 believe after the shooting.

13 Q. Okay. So what happens next after the --  
14 withdrawn.

15 I don't know if I asked you this question,  
16 but I'll ask it again: What was the distance  
17 between the white car that was in the front of  
18 the Honda and the Honda when that white car first  
19 pulled in front of it?

20 A. I'm unsure.

21 Q. What happened next after that car pulled in front  
22 you; you were testifying that the officer got out  
23 of that white car in the front?

24 A. Yes.

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1 Q. And what happened next?

2 A. He told the suspect to stop.

3 Q. You heard him say "stop"?

4 A. I heard him yelling "stop."

5 Q. Okay. And --

6 A. At this time -- sorry to cut you off. At this  
7 time the other cop was out of the car, too.

8 Q. When you say "the other cop," that was in the car  
9 that was behind the Honda?

10 A. Yes.

11 Q. Can you describe, to the best you can remember,  
12 the police officer who got out of white car that  
13 was in front of the Honda?

14 A. Can I describe him?

15 Q. Yeah. Do you remember what he looked like?

16 A. White male probably in his 40s, probably like  
17 five-eleven, six-foot.

18 Q. Okay. How tall are you?

19 A. Five-eleven.

20 Q. So about your height?

21 A. Yeah.

22 Q. Not your brother's height?

23 A. No.

24 Q. At the time that he was saying "stop," did he

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1 have his gun out?

2 A. Yes, his weapon was drawn.

3 Q. Which hand was his weapon in, if you remember?

4 A. I believe his right.

5 Q. Okay. Did you hear the driver of the Honda

6 respond to the police officer when he said

7 "stop"?

8 A. No.

9 Q. How -- what happened next after the -- withdrawn.

10 What was other -- the driver of the other

11 police car doing when this officer was saying

12 "stop"?

13 A. I believe he was yelling to stop, too.

14 Q. Okay. Can you describe the other officer?

15 A. No, I cannot.

16 Q. Now, you see in this picture there is a white

17 police car that's facing into the picture?

18 A. Correct.

19 Q. Were you in the spot where this white car is when

20 this took place?

21 A. No, I was on the opposite side of that yellow

22 marker. That would be the going-down ramp. I'm

23 on the other side of that going up.

24 Q. Okay. So if I'm looking at this picture and the



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1 white police car is underneath where the sign  
2 says "Hoosick Street"; correct?

3 A. Uh-huh. Yep.

4 Q. Okay. So there's a yellow median that's to the  
5 left of that police car?

6 A. Yes.

7 Q. And you were on the other side of that yellow  
8 median?

9 A. Yes.

10 Q. So what happened next after the officer gets out  
11 of the first white car with the gun in his hand  
12 and he says "stop"?

13 A. The driver doesn't stop. He backs up in reverse.  
14 I think he hit the car behind him or went towards  
15 the car behind him, and then went forward towards  
16 the cop with his vehicle.

17 Q. Okay. When he hit the car behind him, did you  
18 hear a collision?

19 A. Not that I can remember, no.

20 Q. Do you have a recollection of the Honda making  
21 contact with the car behind it?

22 A. I just seen him in reverse.

23 Q. So you saw the Honda back up?

24 A. Yes.

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1 Q. You testified though when we were talking a  
2 minute or two ago or you gave some indication  
3 that it had hit the car. Do you remember it  
4 hitting the car behind it?

5 A. Yes, I believe he hit the car behind it.

6 Q. Did you hear that collision?

7 A. No.

8 Q. Was it light?

9 A. It might have been just like a little  
10 fender-bender type of hit.

11 Q. And what was the officer in the white car doing  
12 when the Honda hit the police car behind it when  
13 it backed up?

14 A. Which white car?

15 Q. What was the officer in the car that was in front  
16 of the Honda who was holding his gun doing when  
17 the Honda hit the car behind it?

18 A. Telling him to stop, shouting.

19 Q. And what did the officer who was in the car  
20 behind the Honda do when the Honda hit that car?

21 A. I believe he moved out of the way so he didn't  
22 get hit by the car.

23 Q. Did you see a gun in the hand of that other  
24 officer, the driver of the car behind the Honda?

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1 A. Yes, I did.

2 Q. Okay. What happened next after the Honda backed  
3 into the police car behind it?

4 A. He went towards the front cop with his car.

5 Q. Okay. He was driving straight or at an angle?

6 A. It was like he was trying to get out from in  
7 between the cars.

8 Q. He was trying to get around the car in front him?

9 A. Yeah.

10 Q. Okay. What happened -- withdrawn.

11 When the car -- when the Honda backed up and  
12 hit the car behind it, did it stay in contact  
13 with that car, or did it move off it right away?

14 A. When he backed up and hit the car, it's kind of  
15 like he just -- at the time he switched gears  
16 right away and went forward.

17 Q. And you saw the angle of the car turning to the  
18 right -- withdrawn.

19 Was the angle of the car turning to the  
20 right, the Honda?

21 A. It was like straight-ish because he was into the  
22 wall, and then he backed up to get out of the  
23 wall, and then went forward.

24 Q. When he was moving forward was the car driving

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1 straight, or was it driving towards an angle?

2 A. I'm unsure.

3 Q. Okay. You said that the driver was trying to get  
4 away. So he was trying to drive -- from your  
5 vantage point it looked like he was trying to  
6 drive the police car that was in front of him?

7 A. Either around him or through him. I'm unsure.

8 Q. Okay. And what happened next?

9 A. When he was going toward the cop with his car,  
10 that's when -- that's when the shooting happened.

11 Q. Did you see --

12 A. I believe -- sorry to cut you off.

13 Q. Sure.

14 A. I believe it was simultaneously like as -- like  
15 the cop started shooting as he was getting hit,  
16 like it was like simultaneously happened.

17 Q. Okay. The cop starting the shooting as what was  
18 getting hit?

19 A. As he was getting hit by the driver.

20 Q. So the car has already finished its reverse?

21 A. Yes. So he hit the car behind him and started  
22 going forward.

23 Q. And as he's moving forward, what's the distance  
24 between where it was and the car in front?

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1 A. I'm unsure.

2 Q. And how many shots did you hear fired at that  
3 point?

4 A. I'm unsure.

5 Q. Did you see -- withdrawn.

6 You testified that the shots were fired --  
7 you know what? I don't need to repeat what you  
8 said. Why don't you tell me how long after the  
9 car started moving forward from having struck the  
10 car behind it were the shots fired.

11 A. I don't know how long. It happened fast. He was  
12 trying to get away.

13 Q. Okay. Did you hear any of the shots fired before  
14 the Honda made contact with the officer?

15 A. No. Like I said, it was like simultaneously --  
16 happened.

17 Q. So as the Honda was making contact with the  
18 officer, the shots were being fired?

19 A. Correct.

20 Q. Okay. Which part of the Honda hit the officer?

21 A. The front.

22 Q. Okay. And which part of the officer was hit by  
23 the Honda?

24 A. His lower half.

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1 Q. Okay. Did the officer attempt to move out of the  
2 way?

3 A. Yes.

4 Q. Which way was he moving?

5 A. I'm unsure.

6 Q. Did the officer say anything as the Honda was  
7 moving forward?

8 A. I'm unsure.

9 Q. After the Honda made contact with the officer,  
10 did the officer continue shooting?

11 A. Yes, I believe so.

12 Q. How many shots were fired after the Honda made  
13 contact with the officer?

14 A. Don't know.

15 Q. Have you ever seen anyone shoot a gun?

16 A. Yes.

17 Q. So you know that guns have different capacities  
18 for the magazines that they're holding; correct?

19 A. Yep.

20 Q. Have you ever fired a gun?

21 A. Yes.

22 Q. What kind of gun?

23 A. A shotgun, a .22 cal -- or .22, a 9-millimeter.

24 Q. You don't know sitting here today what the

—KEITH MILLINGTON - 11/16/17—

1 capacity for the magazine in this --

2 A. No.

3 Q. -- officer's gun; correct?

4 A. Correct.

5 Q. Were all of the shots fired in succession, or was  
6 there a break at any point in the shooting before  
7 the next shots were fired?

8 A. Unsure.

9 Q. Did you ever see the officer of the car that was  
10 behind the Honda fire his gun?

11 A. Yes, I believe he did.

12 Q. So if you can estimate for me, how long was the  
13 period of time that those shots were fired?

14 A. I don't know, a few seconds.

15 Q. Did you see the officer firing his gun --  
16 withdrawn.

17 Did you see the officer behind the Honda  
18 firing his gun before or after the Honda made  
19 contact with officer that was in the front?

20 A. I'm unsure.

21 Q. These questions are about an event that took  
22 place a year-and-a-half ago that you saw in a  
23 short period of time, so "I don't know" and "I'm  
24 not sure" is fine as an answer. The answers are

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1 to the best of your recollection.

2 Did you see the car move again after it made  
3 contact with the officer, or did it stop after it  
4 made contact with the officer?

5 A. It stopped until they hit the car, until they hit  
6 the police cruiser. He was in front of the  
7 Honda. The guy was going forward and --

8 Q. So the officer was outside of the police cruiser  
9 in front of the cruiser, and after the Honda hit  
10 the officer it hits the police cruiser?

11 A. Yes, as if he was -- the police officer is in  
12 between both vehicles.

13 Q. Okay. After that Honda hits the cruiser, did you  
14 ever see the Honda move again?

15 A. No.

16 Q. Did you ever hear the officer issue any kind of  
17 verbal warning when he started firing?

18 A. I'm unsure.

19 Q. I'm going to ask the question again only because  
20 I wasn't precise in the way I asked it: Did you  
21 hear the officer of the police cruiser in front  
22 of the Honda issue any kind of warning before he  
23 started firing?

24 A. I'm unsure.



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1 Q. You recall hearing something, but you don't know  
2 what it was, or you don't know if he ever said  
3 anything?

4 A. All I can remember is him telling the guy to stop  
5 his vehicle.

6 Q. What happens next after the Honda makes contact  
7 with the officer and the vehicle?

8 A. The second cop that was behind him walked up to  
9 the driver's side of the Honda, and I believe he  
10 pulled the suspect out the vehicle.

11 Q. Okay. Did you see that person when he was pulled  
12 out of the vehicle?

13 A. I seen him get pulled out. I didn't see him  
14 after that. There was a barrier to my left.

15 Q. You ever see anybody try to give medical  
16 attention to that guy -- withdrawn.

17 Instead saying "that guy," let's use a -- a  
18 little more precise. The driver of the Honda  
19 gets pulled out of the vehicle?

20 A. Correct.

21 Q. Did you ever see anyone render medical attention  
22 to the driver of the Honda?

23 A. I'm unsure. The barrier is about probably waist  
24 high. If he's on the ground when they pull him

—KEITH MILLINGTON - 11/16/17—

1 out, I can't see if --

2 Q. So you can't see what he's doing because he's not  
3 in your vision?

4 A. Yeah, now that he's on the ground.

5 Q. And what did the driver of the car that was  
6 behind the Honda do after he pulled the driver of  
7 the Honda out?

8 A. I'm unsure. I couldn't see when he was on the  
9 ground.

10 Q. Okay. The driver of the police car behind the  
11 Honda pulled the driver of the Honda out?

12 A. Yes.

13 Q. What did driver of that police car do after he  
14 pulled the driver of the Honda out of the Honda?

15 A. I'm unsure. I believe he apprehended him.

16 Q. Well, did you see the driver of the police car  
17 that was behind the Honda try to move the Honda?

18 A. I'm unsure.

19 Q. What was officer that was in between the two cars  
20 doing while the driver of the Honda was being  
21 pulled out of the Honda?

22 A. I believe he was yelling, but I don't remember  
23 what he was yelling.

24 Q. Did you get out of the car at this point?

—KEITH MILLINGTON - 11/16/17—

1 A. No, I did not.

2 Q. So what's the next thing that you saw happen  
3 after the driver of the Honda gets pulled out of  
4 the Honda?

5 A. Well, I seen more -- I seen another police car  
6 arrive on the scene, and they kind of told us to  
7 keep it moving.

8 Q. Okay. Did you say anything to any police officer  
9 at the scene?

10 A. No, I did not.

11 Q. Do you recall ever telling anyone -- withdrawn.

12 Do you recall ever telling any police  
13 officer that they didn't have to kill the driver  
14 of the car?

15 A. That was my friend yelling.

16 Q. Who's your friend?

17 A. Vinny, but he was belligerent drunk.

18 Q. Okay. So you didn't say, You didn't have to kill  
19 him?

20 A. Correct; I did not say that.

21 Q. What did you say to Vinny when he said that?

22 A. Nothing. He thought it was -- he thought he knew  
23 the guy. He thought it was one of his friends  
24 based on the car, but it was not.

—KEITH MILLINGTON - 11/16/17—

1 Q. How do know that?

2 A. Because he told me.

3 Q. Vinny told you that he thought he knew the driver  
4 of the Honda?

5 A. Well, after. Yeah, that's why he kind of was  
6 yelling because he thought that he knew him. He  
7 thought it was one of his friends which it was  
8 not, come to find out.

9 Q. Take a look at the texts that we have in front of  
10 you that are Exhibit 2, if you don't mind. And  
11 if you don't mind, there are numbers that are on  
12 the bottom of the text messages. These are  
13 numbers that were applied by lawyers, so you  
14 don't have to worry about what the numbers mean.

15 On page 378, what's being discussed here  
16 where it says "Okay. That's fine. I was just  
17 wondering, but still going to court. My lawyer  
18 wants to go to trial so it just gets thrown out  
19 that the kid that wrote a statement on me"?

20 A. Well, there was an incident at a party where this  
21 kid said that I had beat him up, which was false.  
22 I never -- he only accused me of it. He went to  
23 the hospital. They -- he ended up getting a  
24 broken nose or a broken tooth. He went to the

—KEITH MILLINGTON - 11/16/17—

1           troopers, said that it was me. They called me,  
2           asked me about it, I didn't answer them. I  
3           called Lee, my lawyer, and I told him --

4       Q. I don't want to know about any conversation you  
5       had with Kindlon.

6       A. I know. I'm not going to tell you anything that  
7       -- I told him about what had happened, what was  
8       going on. He contacted the trooper and we went  
9       up there, and they pretty much arraigned me for  
10      it. I went to court for it and everything got  
11      dropped. And that's what I was talking about.

12     Q. Okay. Now, if you turn to page 379, which has  
13     the next page in these papers, it says "Hey,  
14     Colleen, I have to talk to you about," and then  
15     it spills over to the next page, "something  
16     whenever you're free." Was that the shooting  
17     that you were talking about?

18     A. Correct.

19     Q. And then the next time you tried to contact  
20     her --

21     A. What was the date? No. No. No, I don't believe  
22     so.

23     Q. So the bottom of page 379, "Hey, Colleen, I have  
24     to talk to you about," that's April 22nd;

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1 correct?

2 A. Correct.

3 Q. Is that the shooting that you need to talk to her  
4 about?

5 A. I'm unsure.

6 Q. Do you know what date the shooting took place?

7 A. No, I don't remember.

8 Q. Okay. If I tell you that it was April 17th, does  
9 that refresh your recollection?

10 A. Yes.

11 Q. But you don't know whether you wanted to talk to  
12 Colleen about was the shooting?

13 A. Well, now that I know the date, yes, I believe  
14 that was about the shooting.

15 Q. And then two weeks later is your next text  
16 message to Colleen?

17 A. Correct.

18 Q. Did you wind up talking to Colleen about the  
19 shooting between April 22nd and May 3rd?

20 A. I believe I told her I witnessed the shooting. I  
21 didn't go into details about anything that I  
22 seen.

23 Q. Did any member of the Troy Police Department  
24 contact you after you told Colleen that you saw a

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1 shooting?

2 A. No.

3 Q. And then on the May 3rd you say "Hey, Colleen,  
4 call me ASAP." Right; that's on page 380?

5 A. Uh-huh.

6 Q. "ASAP," means as soon as possible; right?

7 A. Yes. And she did not call me, I don't believe.

8 Q. All right. Why did you want her to call you as  
9 soon as possible on May 3rd?

10 A. I believe I was going to tell her how my meeting  
11 went.

12 Q. Okay. Who was the meeting with?

13 A. My lawyer, and I believe it was attorneys from --  
14 the guy who was suing the guy from Troy, the  
15 attorney from Troy. I spoke to his lawyers.

16 Q. Okay. Who did you speak to?

17 A. I'm unsure of his name. I forgot it.

18 Q. How did they find you?

19 A. I don't remember. They came to my house.

20 Q. Okay.

21 A. Same with the news and a bunch of other people.

22 Q. Did you ever meet me before?

23 A. I'm unsure.

24 Q. Did you ever meet members of the attorney

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1           general's office?

2           A.    Yes.

3           Q.    Was the meeting with the attorney general's  
4               office before or after the ASAP message that you  
5               sent to Colleen on May 3rd?

6           A.    It might have been before. I'm unsure of the  
7               time of the meeting.

8           Q.    Who did you meet with from the lawyer for the  
9               Thevenin family?

10          A.    Unsure. I know a male came to my house before I  
11               -- before I even talked to my lawyer, and he was  
12               trying to talk to me at my door, and he was like  
13               recording me with his phone. He said he was a  
14               private investigator.

15          Q.    But he's not the lawyer that you're talking  
16               about?

17          A.    No, I'm unsure who the lawyer was.

18          Q.    But you're certain that the lawyer was from the  
19               family?

20          A.    I don't know. I had my lawyer, and then the  
21               general attorney's lawyers were there. I was  
22               speaking to them.

23          Q.    So you were meeting with your lawyer and the  
24               attorney general?



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1 A. Yes.

2 Q. But there was a lawyer from the family that was  
3 there?

4 A. I don't know.

5 Q. Okay.

6 A. You're the one who said that.

7 Q. No, you said that you had -- contacted by the  
8 lawyer for the family, which is why I asked.

9 A. When?

10 Q. That's why I asked if you saw me.

11 A. I don't -- that was a mistake then. I did not.

12 Q. Let's start again. Have you ever met with the  
13 lawyers for the family of the person who was  
14 killed?

15 A. No, not that I recall.

16 Q. Let's turn to page 381 -- actually, go to 382. I  
17 don't mind if you swear. Can you read the box in  
18 the middle of the page.

19 A. Yeah, it says "This all going to fuck me over  
20 with trying to be a Troy cop."

21 Q. And then at the end of it it says "I know it";  
22 right?

23 A. Yeah, know it.

24 Q. Okay.

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1 A. Dot dot dot.

2 Q. Right. You wrote that?

3 A. Yes.

4 Q. Why was this going to be problematic for you if  
5 you wanted to be a Troy cop?

6 A. I just felt that getting involved with this --  
7 being involved with this whole situation would  
8 vest on me being a police officer. It's just  
9 something I didn't even want to be at or present  
10 at or seen.

11 Q. Did you ever tell anyone at the scene who you  
12 were?

13 A. No, I did not.

14 Q. And the car that you were driving was Vinny's  
15 car; right?

16 A. Yes, a Jeep.

17 Q. Anyone ever tell you how they found you at your  
18 house?

19 A. I'm unsure.

20 Q. You don't know if anyone told you?

21 A. No, I don't believe they told me.

22 Q. Did you ever testify in court in connection with  
23 the shooting?

24 A. No.

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1 Q. Have you heard the term "grand jury"?

2 A. Yes.

3 Q. You ever been in front of a grand jury?

4 A. No.

5 Q. You ever see a grand jury?

6 A. Not in person.

7 Q. On TV?

8 A. Yeah.

9 Q. Okay. Did you ever tell Colleen at any point  
10 what you saw?

11 A. Not that I recall.

12 Q. Did you ever see the Honda get separated from the  
13 police car that it was in contact with in front  
14 of the Honda, or were you already gone before  
15 that happened?

16 A. Just like I said earlier, I'm unsure. I believe  
17 I might have been already gone.

18 Q. Well, I'm just asking if you ever saw the Honda  
19 separated from that police car that was in front  
20 of it?

21 A. No.

22 Q. Did you ever see the police officer who had been  
23 between those cars after he shot the driver of  
24 the car?

—KEITH MILLINGTON - 11/16/17—

1 A. No.

2 Q. Do you know his name?

3 A. No.

4 Q. Do you know the name of the guy who was the  
5 driver of the Honda?

6 A. Yes.

7 Q. What's his name?

8 A. Edison [sic].

9 Q. Did you ever hear the person you were describing  
10 as Edison talk?

11 A. Nope, I did not.

12 Q. Did you ever see him walking?

13 A. Nope.

14 Q. Did you ever see him moving?

15 A. Nope, there was a barrier in the way. Unless he  
16 was moving after he got pulled out of the  
17 vehicle.

18 Q. Well, I'm not asking you to guess. I'm just  
19 asking what you saw, if you saw him moving.

20 A. No. Besides when he was driving.

21 Q. Were you able to see his profile from the side  
22 when he was driving?

23 A. I don't know.

24 Q. Okay. Was there anybody else in the car with

—KEITH MILLINGTON - 11/16/17—

1 Edison?

2 A. No.

3 Q. Was there anyone else in the police car that was  
4 in front of the Honda?

5 A. Not that I seen.

6 Q. Did you see fire trucks come to the scene?

7 A. Not until I was on my way home after the scene.

8 Q. How did you see the fire trucks, in your rearview  
9 mirror?

10 A. No, after I went and dropped Vinny off when I was  
11 on my way home.

12 Q. You came back?

13 A. I drove back across it.

14 Q. Okay. About how long after you dropped Vinny did  
15 you drive past -- withdrawn.

16 About what time did you drive past the scene  
17 on your way back?

18 A. I'm unsure.

19 Q. Was it more than ten minutes after you left?

20 A. Yes.

21 Q. More than 20 minutes after you left?

22 A. I'm unsure of that.

23 Q. When you saw the shooting, did you say anything  
24 to Vinny?

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1 A. Not that I remember.

2 Q. When Vinny said "you didn't have to shoot him,"  
3 did you say anything to Vinny after that?

4 A. I probably told him calm down because he was  
5 freaking out because he thought it was one of his  
6 friends. He was kind of yelling, That was my  
7 friend or something like that. He was really  
8 drunk. I probably told him to relax.

9 Q. Was it raining at the time?

10 A. No.

11 Q. Were your windows open or closed on the driver's  
12 side?

13 A. They were up, but they weren't real windows.  
14 They were like Jeep plastic -- not plastic. Kind  
15 of like you can bend it. Whatever they're  
16 called. You know the ones that zip up? Those  
17 ones.

18 Q. This was a Wrangler.

19 A. Yeah. I'm not sure what year.

20 Q. Soft top?

21 A. Yep.

22 Q. And when you came back through the second time,  
23 you didn't talk to any police officers at that  
24 point either; correct?

—KEITH MILLINGTON - 11/16/17—

1 A. No.

2 Q. Did you ever discuss with Vinny what you saw?

3 A. We kind of just said that it was crazy what we  
4 just witnessed.

5 Q. What did Vinny tell you he saw?

6 A. I'm unsure.

7 Q. Do you not remember Vinny talking to about it, or  
8 you just can't remember what he said?

9 A. I can't remember what he said.

10 Q. Did you see which part of the police vehicle in  
11 front of the Honda was hit by the Honda when it  
12 moved forward?

13 A. I'm unsure. I know it's just the left driver's  
14 side.

15 Q. Do you know if it was the front of the car, the  
16 back of the car, the middle of the car? And I  
17 don't want you to -- I'm going to turn the  
18 picture over because I rather you work based on  
19 your recollection versus what's in this picture.

20 A. I want to say near the driver's side door,  
21 towards the front of the vehicle, maybe.

22 Q. Was the driver's side door open at the time that  
23 the Honda made contact with the police vehicle  
24 that was in front of it?

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1 A. I'm unsure if it closed or not after the officer  
2 got out of the car.

3 Q. Did the officer look like he tried to get out of  
4 the way as the car was moving forward towards  
5 him?

6 A. I don't know.

7 Q. Did the officer have both hands on his gun when  
8 he was firing, or just one?

9 A. Both.

10 Q. You know what a shooter's stance is; right?

11 A. Correct.

12 Q. Was he in a shooter's stance when the car was  
13 moving forward towards him?

14 A. Yes.

15 Q. Was he still in the shooter's stance when you saw  
16 the bullets being fired?

17 A. I'm unsure because it was simultaneously as he  
18 was being hit by the vehicle.

19 (Millington Exhibit 4 was marked for  
20 identification.)

21 Q. I'm going to show you now a document that's  
22 marked as Millington 4. Is that your signature  
23 on the first page of the document?

24 A. Yes.



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1 Q. And on the second page of the document, do you  
2 see your signature as well?

3 A. Yes.

4 Q. Anybody force you to sign this document?

5 A. No.

6 Q. Before you signed this document, was it explained  
7 to you that this was your sworn statement?

8 A. Yes.

9 Q. Is everything in this document true?

10 A. Yes.

11 MR. TORCZYNER: Okay. I have nothing further  
12 for you at this point. Thank you for coming down.  
13 I'm certain that John is going to have some  
14 questions and it's possible that I'll have some  
15 follow-up for you after that.

16 EXAMINATION BY COUNSEL FOR THE DEFENDANTS

17 BY MR. ASPLAND:

18 Q. How you doing, Keith?

19 A. I'm doing all right. How about you?

20 Q. Good. So same ground rules that Neal explained  
21 to you apply to my questions. All right?

22 A. Okay.

23 Q. I don't want you to guess or anything. I want  
24 you to tell me what you remember, and I want you

—KEITH MILLINGTON - 11/16/17—

1 to answer the questions to the best of your  
2 ability.

3 A. All right.

4 Q. Fair enough?

5 A. Uh-huh.

6 Q. All right. So you said you're five-eleven?

7 A. What happened?

8 Q. You're five-foot-eleven?

9 A. Yeah, just about.

10 Q. Okay. So you're five-foot-eleven give or take;  
11 right?

12 A. Yeah, just about.

13 Q. And what do you weight, about 235?

14 A. Like 250.

15 Q. 250. Was that about your weight on the day back  
16 in April of 2016?

17 A. No, probably like 220.

18 Q. The officer who told you to move along, can you  
19 physically describe what that officer looked  
20 like?

21 A. No, I cannot. It was one of the other patrol  
22 vehicles that showed up.

23 Q. Now, in answers to counsel's question you  
24 indicated that the officer that was at the rear

—KEITH MILLINGTON - 11/16/17—

1 of the Honda, you said -- did you say he fired  
2 his gun or you believe he fired his gun?

3 A. I believe he fired his gun.

4 Q. And can you physically describe the second  
5 officer?

6 A. No, I cannot.

7 Q. Have you ever been present at a shooting before?

8 A. No.

9 Q. Were you afraid?

10 A. I was kind of -- not really.

11 Q. What were you doing before you went to pick up  
12 Vinny at that party?

13 A. I was at the party myself, and I got there  
14 looking for Vinny. I was at my house. I went  
15 there. I was looking for Vinny, and then he  
16 asked me if I would drive his Jeep home for him  
17 because he was too drunk to drive.

18 Q. Your girlfriend drove you to the party?

19 A. Yes.

20 Q. And your girlfriend left separately?

21 A. Correct.

22 Q. She didn't follow you; correct?

23 A. No, she was actually ahead of us.

24 Q. She didn't stall out at the light?

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1 A. No, not like me.

2 Q. So you guys -- and if you look at -- you have in  
3 front of you Exhibit 3, the photograph; right?

4 A. Yep.

5 Q. So you see where the white police SUV is going  
6 the wrong way on Hoosick Street?

7 A. Yes.

8 Q. If I draw a line across this photograph, was your  
9 Jeep, the front of your Jeep in line with the  
10 front of that white SUV as you were stopped at  
11 the light at the time you observed the events of  
12 April 17th?

13 A. Yes.

14 Q. Does Vinny's Jeep have a lift kit in it, or is it  
15 just a regular Wrangler height-wise?

16 A. It might have a lift kit. It's not that much of  
17 a lift kit though, but he's got bigger tires on  
18 it so you're kind of higher up.

19 Q. And you said that it's got those zip around  
20 plasticity [ph.] windows?

21 A. Correct.

22 Q. And the windows were zipped closed?

23 A. Yep.

24 Q. The whole time?

—KEITH MILLINGTON - 11/16/17—

1 A. Nope. I unzipped it when I -- probably a few  
2 minutes into it all happening and when the other  
3 cop was walking up telling everybody to keep it  
4 -- pretty much keep it moving, get out of there.

5 Q. You unzipped the window down?

6 A. Yeah.

7 Q. At the time that the shots were fired were the  
8 windows zipped up or down?

9 A. Window was zipped up.

10 Q. Okay. And at the time that -- and so were you  
11 looking through the plastic window?

12 A. Yes.

13 Q. In the classes that you've taken at Hudson  
14 Valley, you ever take any classes on eyewitness  
15 accounts and reliability of eyewitness events?

16 A. Yes.

17 Q. What have you learned in that respect?

18 A. I mean, they're sometimes not always right; they  
19 mess things up.

20 Q. Did you ever watch any of the videos where they  
21 give you the demonstration of after somebody's  
22 described an event they show you what really  
23 happened, and they're not particularly similar?

24 A. Yeah, even on the test that I just took for

—KEITH MILLINGTON - 11/16/17—

1           troopers they had questions like that.

2           Q.    Right.  So you scored a 75 on the Troy PD test  
3                the first time you took it?

4           A.    Yes.

5           Q.    Did you ever get called in to do the  
6                psychological part?

7           A.    Nope.

8           Q.    The physical fitness part?

9           A.    No.

10          Q.    Have you ever been through that process with any  
11                law enforcement agency?

12          A.    No.

13          Q.    Do you have any family members that are on the  
14                job?

15          A.    I am related to Mark Millington.

16          Q.    Is he a Troy police officer?

17          A.    Yeah.

18          Q.    What's your relationship to him?

19          A.    He's on my grandfather's side.  We don't really  
20                communicate with him that much.

21          Q.    Like some kind of cousin or something like that?

22          A.    He's my dad's cousin, so that probably be like my  
23                second cousin.

24          Q.    Second cousin.  Right.  When you observed what

—KEITH MILLINGTON - 11/16/17—

1           was going on, would you -- were the lighting  
2           conditions dark or were they light?

3           A.    They were light.  It's pretty -- you can see it  
4           down there pretty good.

5           Q.    And you had the flashing lights of the police  
6           cars going at the time; right?

7           A.    Yep.

8           Q.    And both of those Troy police cars had their  
9           lights activated, the two that you described, the  
10          console as being in pursuit?

11          A.    Yes.

12          Q.    And do you wear glasses?

13          A.    No.

14          Q.    And you said Vinny's the one that yelled, You  
15          didn't have to shoot him?

16          A.    Yeah.

17          Q.    He yelled that more than one time, didn't he?

18          A.    Yeah, pretty much.

19          Q.    And the Troy police officer actually told you to  
20          get the fuck out of there, didn't he?

21          A.    Uh-huh.

22          Q.    Yes?

23          A.    Yep.

24          Q.    And you guys did?

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1 A. Yeah, we left.

2 Q. And you went up to McDonald's after that?

3 A. Correct.

4 Q. After then after you went to McDonald's you  
5 dropped Vinny off at this house?

6 A. Yes.

7 Q. And how long did you stay at Vinny's house before  
8 you drove back to the scene the second time?

9 A. I'm unsure.

10 Q. Now, when you observed the Honda driving towards  
11 the police officer, was it your belief that the  
12 police officer's life was in danger?

13 MR. TORCZYNER: Objection. You can answer.  
14 Don't worry that I'm saying "objection."

15 MR. ASPLAND: He's objecting to form and some  
16 other things. It's just --

17 A. Yes, I believe the police officer's life was in  
18 danger.

19 Q. And the distance that the vehicle was driving  
20 from the point where it hit the car behind it and  
21 then it drove forward coming finally to rest  
22 against the police vehicle you said was about  
23 three feet, maybe?

24 A. Yeah, just about.



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1 Q. And he was driving in a fast manner?

2 A. Correct.

3 Q. Do you know Phil Gross?

4 A. I'm unsure.

5 Q. Did you ever see the video that was taken of the  
6 incident that night?

7 A. No.

8 Q. Did you ever watch any of the street camera  
9 videos that were collected?

10 A. Nope.

11 Q. Did you ever read any of the statements given by  
12 other people?

13 A. Nope.

14 Q. Is -- Colleen Goldstein you said is a family  
15 friend?

16 A. Correct.

17 Q. That's why you reached out to her?

18 A. Yes.

19 Q. Now, you're not sure what time you spoke to her  
20 on May 3rd; is that fair?

21 A. Yes.

22 Q. And you would agree with me that it was before  
23 you went to the attorney general's office though;  
24 correct?

—KEITH MILLINGTON - 11/16/17—

1 A. Yes.

2 Q. So when -- before you went to attorney general's  
3 office, and at that time you were talking to  
4 Colleen, did you tell her you were going to the  
5 attorney general's office?

6 A. Yes, I believe so.

7 Q. All right. And during the conversation you had  
8 with her, do you remember her telling you to tell  
9 the truth about what you saw?

10 A. Correct.

11 Q. And when you had that conversation with her, do  
12 you remember her saying anything else to you?

13 A. I can't remember. All's I remember is her  
14 telling me to tell exactly what I saw and tell  
15 the truth.

16 Q. Did you tell why you hadn't gone down to the Troy  
17 Police Department to tell them what you had seen  
18 that night?

19 A. I'm unsure, but I was going to because I called a  
20 detective -- or I tried calling him, left a  
21 message, and he tried calling me back. I didn't  
22 answer it, and then I called my lawyer.

23 Q. Okay. So you tried calling him and left a  
24 voicemail message?

—KEITH MILLINGTON - 11/16/17—

1       A.    Yeah, I was -- I'm not sure if I left a  
2           voicemail. I don't remember. But I know that he  
3           -- yeah, he must have called back, so he had my  
4           number. So when he called back I didn't answer  
5           him, and I had already talked to my lawyer.

6       Q.    Why didn't you answer the officer that you called  
7           in the first place?

8       A.    I don't know. I felt it was better for my lawyer  
9           to handle it than for me to talk to anybody else.

10      Q.    Okay. So when did -- did Lee Kindlon arrange for  
11           you to go meet with the attorney general's  
12           office?

13      A.    Yes.

14      Q.    Do you know why he chose for you to go to the  
15           attorney general's office over the Troy PD?

16      A.    No, I don't.

17      Q.    Do you know if they reached out to him, or if he  
18           reached out to them?

19      A.    They might have reached out to them.

20      Q.    And you're not sure how anybody got your  
21           information --

22      A.    No.

23      Q.    -- on the instance; right?

24      A.    No.

—KEITH MILLINGTON - 11/16/17—

1 Q. So did -- pull out Exhibit 4 there for a minute.  
2 Now, the text messages that you were exchanging  
3 with Colleen were at 2:07 and 2:08, and then I  
4 7:39 p.m. Do you see those in the text messages,  
5 the time stamps there? It's like pages 389, 381.  
6 I'm talking about the text messages on May 3rd  
7 into May 4.

8 A. What did you want to know about them?

9 Q. You sent those text messages at the times they  
10 are reflected as they're being sent. That's an  
11 accurate statement; correct?

12 A. Correct.

13 Q. And that was in the early afternoon on May 3rd;  
14 right?

15 A. Correct.

16 Q. So then on May 3 and in the early afternoon is  
17 when you told Colleen that you had a meeting with  
18 the attorney general's office later that day on  
19 May 3rd?

20 A. I can't remember if I let her know, based on my  
21 text when I said "call ASAP."

22 Q. Yep, that was at 2:08.

23 A. Yeah, the 2:08. So I don't believe that I spoke  
24 to her, but I'm unsure this was before.

—KEITH MILLINGTON - 11/16/17—

1 Q. Okay. If I told you that she filled out a  
2 document that said she spoke to you at those  
3 times on that day and described the conversation  
4 much the same -- in the form of the questions I  
5 just asked you, would you have any reason to  
6 doubt Colleen?

7 A. No, I would not.

8 Q. So if in her statement she said that you told her  
9 you were meeting with the attorney general at  
10 3:30 p.m., would you have any reason to doubt  
11 that you actually did tell her that?

12 A. No.

13 Q. Right?

14 A. Yeah.

15 Q. So let's talk about the meeting with the attorney  
16 general's office. You went to go see them at  
17 their place; right?

18 A. Yes.

19 Q. Down in Albany?

20 A. Yes.

21 Q. Was it in the Justice Building?

22 A. Like one of the big tower -- yeah.

23 Q. Yeah. Right by the egg?

24 A. Yep.

—KEITH MILLINGTON - 11/16/17—

1 Q. And there's those big tall buildings?

2 A. Correct.

3 Q. Did you have to go through security to get in?

4 A. No. No, I went right to the --

5 Q. Right to the floor?

6 A. -- right to the floor, and then it was right out  
7 of there.

8 Q. Now, it says that Mitch Porowski is the person  
9 that you met with?

10 A. Yes.

11 Q. Have you ever talked to Mr. Porowski prior to  
12 going to see him on May 3rd?

13 A. I believe they tried stopping by my house one day  
14 I was at the gym, and my dad spoke to them.

15 Q. What's your dad do for a living?

16 A. He's a CLD truck driver, so he drives tractor  
17 trailer.

18 Q. What's your mom do?

19 A. She is a RN, but she's not working right now.

20 Q. So when Mr. Porowski -- did he leave his card  
21 when he stopped by and talked to your dad?

22 A. Yes.

23 Q. Okay. Did you give his card to Lee Kindlon?

24 A. I believe I called Lee. I might have called Lee

—KEITH MILLINGTON - 11/16/17—

1           -- I'm unsure when I called Lee, but I know I  
2           called him after because my dad called me and  
3           told me that they were there when I was at the  
4           gym.

5           Q.    Got you.  What gym do you work out at?

6           A.    Vent.

7           Q.    Okay.  So you speak to Lee, there's a meeting  
8           arranged to go to the attorney general's office,  
9           and you're not sure why you're going there versus  
10          the Troy PD, but you're going to the attorney  
11          general's?

12          A.    Yes.

13          Q.    That document that's in front you is Exhibit 4.  
14          Is that your handwriting?

15          A.    No, it is not.

16          Q.    And look at the top portion where it says "State  
17          of New York, County of Albany."  And then it says  
18          "location 146 State Street, Albany"; right?

19          A.    Uh-huh.

20          Q.    Do you see that?

21          A.    Yeah.

22          Q.    Then it says "time started 3:40 p.m."  Do you see  
23          that?

24          A.    Yeah.

—KEITH MILLINGTON - 11/16/17—

1 Q. All right. Is that -- your meeting was at 3:30  
2 give or take, and at 3:40 someone starts creating  
3 this document --

4 A. Correct.

5 Q. -- right?

6 A. Yes.

7 Q. So go to the bottom of the second page. See at  
8 the very bottom where it says "This voluntary  
9 statement was completed at 5:10 p.m."?

10 A. Yes.

11 Q. Is that -- is that what time you left the office  
12 that day?

13 A. I'm unsure.

14 Q. Is that your handwriting, the 5:10?

15 A. No, it is not.

16 Q. Okay. Was that part filled out when you signed  
17 it?

18 A. I'm unsure. I'm trying to think if it's my hand  
19 -- I'm unsure if that's my handwriting or not.

20 Q. All right. But that's definitely your signature  
21 on the bottom of both pages?

22 A. Yes, that's my signature.

23 Q. All right. And the handwriting that is the  
24 statement portion is not your handwriting?



—KEITH MILLINGTON - 11/16/17—

1 A. No, that is not.

2 Q. And let me ask you: How did this process work?

3 This is a two-page statement; right?

4 A. Uh-huh.

5 Q. That was started at 3:40?

6 A. Yes.

7 Q. So it's, what, an hour and 40 minutes later give  
8 or take, you're done with the statement; right?

9 A. Yes.

10 Q. Around 50 minutes almost. So how long did it  
11 take to actually, what is it? Hour and 30, hour  
12 and 30 minutes? You see the math I'm doing here  
13 on the fly. Neil will help me out. So you have  
14 a two-page statement that's in front of you, and  
15 this is the entire statement that you provided;  
16 correct?

17 A. Correct.

18 Q. And it took an hour-and-a-half to write out these  
19 two pages; does that sound right to you?

20 A. Well, when I first got there I sat down with a  
21 few people. It was me, Lee, and I believe --  
22 there was a few other people. I'm unsure who.

23 Q. Was Porowski one of them?

24 A. Yes.

—KEITH MILLINGTON - 11/16/17—

1 Q. Was Paul Klein one of them?

2 A. I believe so, yes.

3 Q. How about a guy named Enfield, was he also one of  
4 them?

5 A. Yeah. Enfield, yep.

6 Q. What about a woman by the name of Jen Sommers,  
7 was she there?

8 A. There was a woman there. I'm unsure if that's  
9 her name or not.

10 Q. She was an attorney from the attorney general's  
11 office; right?

12 A. Yeah.

13 Q. Did she seem like she was in charge?

14 A. No, I was more talking to that Enfield guy and  
15 Mitch.

16 Q. What did Enfield talk to you about?

17 A. They pretty much -- they asked what I seen. And  
18 then after I said my story, they pretty much were  
19 just throwing questions, asking different things  
20 about it. And then like I showed him like --  
21 like from the picture of the car, I showed them  
22 like a -- I took like a pen, and I showed him how  
23 I seen how it was set up so they had a visual of  
24 it.

—KEITH MILLINGTON - 11/16/17—

1 Q. Okay.

2 A. And then that was pretty much it.

3 Q. Well, then did there come a time during that  
4 period where they were asking you questions where  
5 they called in the question what you said you  
6 saw? Do you understand my question?

7 A. Yes.

8 Q. Did they do that to you?

9 A. Yes, I believe so.

10 Q. And did there come times where you told them  
11 something, and then they tried to make it --  
12 re-word it so that it was different than how you  
13 originally said it to them?

14 A. Yes.

15 Q. And did they write these things out into this  
16 statement?

17 A. Yes, they wrote everything down on here.

18 Q. Right. These are not all your words though;  
19 correct?

20 A. Yeah. I mean, like "I would like to say that on  
21 Sunday," I mean, I wouldn't have said that. I  
22 would have been like on Sunday, April 17th.

23 Q. Right.

24 A. So some of them -- some are, some aren't.

—KEITH MILLINGTON - 11/16/17—

1 Q. So they worded things the way they wanted them  
2 worded based on what you said to them; is that a  
3 fair statement?

4 MR. TORCZYNER: Objection. Don't worry about  
5 my objection. It's just for the record.

6 Q. Is that a fair description of what occurred that  
7 day?

8 A. Some things in here. Not all. Most of it seems  
9 like what I -- how I said my story was what they  
10 wrote down.

11 Q. All right. Go to the first page. Help me out  
12 here because I think this is one of those  
13 instances. If you look at the first page, it's  
14 one, two, three, four, five, six, seven, eight,  
15 nine -- nine lines down beginning of the line it  
16 says "Zip down." And then next sentence reads "I  
17 had my windows zipped down a little because it  
18 was nice" --- it was a nice night."

19 Do you see where they put that?

20 A. Yeah, I didn't say that.

21 Q. Yeah. That's different than what you told us;  
22 right?

23 A. Yeah. That's funny. I didn't even --

24 Q. And then where it says "My girlfriend, Madelyn

—KEITH MILLINGTON - 11/16/17—

1 Bergmann," do you see that line?

2 A. Yeah, Madelyn.

3 Q. Madelyn. I'm sorry. "Madelyn Bergmann was  
4 behind me with her car, and I motioned her to go  
5 around me because I kept stalling out."

6 Do you see that, that sentence I just read?

7 A. Yeah.

8 Q. Is that what you told them?

9 A. I'm unsure. I can't remember if she was behind  
10 me or not. I remember she did go past us to go  
11 up towards McDonald's.

12 Q. Right. But you don't remember saying those exact  
13 words to them?

14 A. I'm unsure.

15 Q. Okay.

16 A. I do remember saying that -- I do remember  
17 telling my girlfriend -- I waved her past because  
18 I was stalling out.

19 Q. Okay. Go to the second page for me. 15 lines  
20 down on the far left you can see the word "cop  
21 shot, Honda kept rolling forward."

22 Do you see that line? The sentence reads  
23 "after the cop shot that Honda kept rolling  
24 forward."

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1 A. Yeah, I see it.

2 Q. "And it looked like it could have hit the first  
3 cop car"?

4 A. Uh-huh.

5 Q. Now, what you described to us today is more  
6 specific; right?

7 A. Yeah, simultaneously.

8 Q. Right, but it's more specific, too. You see it  
9 hit the cop car; didn't it?

10 A. Yeah.

11 Q. And it was accelerating towards the police  
12 officer; correct?

13 A. Yeah.

14 Q. And then let's just go to the next sentence, it  
15 says "The cop in the second car then ran up to  
16 the Honda, pulled the guy who was driving the  
17 Honda out of the car and onto the ground where it  
18 looked like the cop gave the guy a kick."

19 Do you see where that's written there?

20 A. Yeah, I do remember that now. The cop did -- did  
21 that.

22 Q. Let's talk about that barrier that's in between  
23 where you are and where the car is --

24 A. Correct.

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1 Q. -- that you couldn't see if anybody rendered him  
2 any help.

3 A. Uh-huh.

4 Q. So you couldn't see if anybody rendered him any  
5 help, but you could see that he gave him a kick?

6 A. It looked like a motion, like if you were to  
7 throw like a kicking motion. But I mean, you  
8 know, they were at -- the barrier was there.

9 Q. Could it have easily been that he was stepping  
10 over the person he pulled out of the car?

11 A. Yep.

12 Q. Because he got into the car; right, the second  
13 officer?

14 A. I'm unsure.

15 Q. Well, go down a little bit.

16 A. Yeah, I see that.

17 Q. "After getting the guy out of the Honda, the  
18 second cop got into the Honda, and it looked like  
19 he was trying back the Honda up."

20 A. Uh-huh.

21 Q. So it could have just been he's stepping over the  
22 guy to get into the car; right?

23 A. Yeah.

24 Q. You couldn't actually see that he was trying to

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1 kick him; correct?

2 A. Correct. I'm sure I said "unsure" if the cop got  
3 in the car earlier.

4 Q. And they didn't write any of that when you told  
5 them that? They wrote what appeared in this  
6 document; correct?

7 A. Restate that.

8 Q. Porowski wrote down what he wrote down? He  
9 didn't write down everything he told you; isn't  
10 that right?

11 A. Correct.

12 Q. And he changed some of what you told them when he  
13 wrote it out in sentence form in this statement;  
14 correct?

15 A. Some of it, yes, like the nice night one.

16 Q. And the beginning part?

17 A. Yeah.

18 Q. And then we can go down a little bit further, it  
19 says "A couple minutes afterwards a bunch of  
20 other cops showed up. One of them said to me,  
21 Get the fuck out of here. I then drove away east  
22 on Hoosick, and we went to McDonald's on Hoosick  
23 Street and 15th across from Speedway gas station.  
24 I want to say that my friend Vinny was drinking



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1 at that part that night, but I didn't have  
2 anything to drink. That's why I went to the  
3 party to pick him up."

4 But you were at the party; weren't you?

5 A. Yes, I came -- I told you my girlfriend went and  
6 dropped me there. I went inside to find him,  
7 yes.

8 Q. But you weren't at the party -- you weren't  
9 hanging out at the party --

10 A. No, I was not.

11 Q. -- before your girlfriend dropped you off?

12 A. No, I was not.

13 Q. Got you. Okay. And then it says here "I want to  
14 say when the Honda backed up and hit the second  
15 cop car he was going pretty fast, and when he  
16 started pulling forward he was going pretty fast  
17 to get away. To me, it looked like he would have  
18 had to either go all the way around the cop or go  
19 through him to get away." Do you see that?

20 A. Yeah.

21 Q. You remember saying that part; right?

22 A. Yeah, I did, I signed it.

23 Q. And then is that your signature at the end of  
24 there, the initials KM?

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1 A. Yep.

2 Q. And then you drew a line down at the bottom of  
3 the page and signed your name across the line;  
4 correct?

5 A. Correct.

6 Q. Did you do that to indicate that this is the end  
7 of the statement?

8 A. Yes.

9 Q. All right. Now --

10 A. He did reword that I went to say that my friend  
11 Vinny was drinking. I knew he was drinking. I  
12 knew he was drunk. He asked me to drive him  
13 home.

14 Q. Right. You described him today to us as being  
15 belligerent drunk?

16 A. Yeah, he probably wouldn't even remember the  
17 night if you asked him about it.

18 Q. Well, he may be asked about it. You think he's  
19 that intoxicated --

20 A. Yeah.

21 Q. Like he was pretty lit?

22 A. Yeah, he was lit.

23 Q. So what's the amount of time that you think you  
24 spent sitting there while Porowski wrote this out

—KEITH MILLINGTON - 11/16/17—

1           versus the total amount of time that you sat  
2           there while they questioned you and asked you  
3           things --

4           A.   Not -- sorry to cut you off. Not long. He kind  
5           of went through it fast, too.

6           Q.   Okay. And you read it quickly, or did you take  
7           your time and read it?

8           A.   I believe I -- I think I believe I read it  
9           quickly.

10          Q.   And then you signed it?

11          A.   Yeah. I kind of thought it was all right, and I  
12          sign it, yes.

13               MR. TORCZYNER: Can you read back the  
14          question and answer.

15               (The requested testimony was read back.)

16          Q.   So you gave it a read and you signed it. Did you  
17          guys leave right away?

18          A.   Yes, I shook their hand and left right after  
19          that.

20          Q.   Now, have they talked to you since that day?

21          A.   I met with them twice. And I don't -- can I look  
22          at my lawyer's text to see something real quick?

23          Q.   Can you?

24          A.   Yeah.

—KEITH MILLINGTON - 11/16/17—

1 Q. To refresh your recollection?

2 A. Yeah, I want to see something.

3 MR. TORCZYNER: No, you can't.

4 Q. I can't mark it.

5 MR. TORCZYNER: Not only can you not mark  
6 it, but he's going to testify based upon --

7 A. Well, I want to see -- I just want to look at a  
8 date.

9 MR. TORCZYNER: You know what, I'm going ask  
10 you, if you don't mind, just let John and I step  
11 out and don't look at the phone for a minute so  
12 John and I can talk about it, and then we'll know  
13 if you can. Okay.

14 THE WITNESS: All right. If not, I won't.

15 MR. TORCZYNER: No, it's fine.

16 Q. No, it's fine.

17 MR. TORCZYNER: We can decide whether you  
18 can, and it's better if we talk about it  
19 ourselves so that you don't hear our  
20 conversation. Just don't look at it yet. We'll  
21 let you know.

22 (An off-the-record discussion was held.)

23 MR. TORCZYNER: The lawyers had a  
24 conversation outside. You can look at the text to

—KEITH MILLINGTON - 11/16/17—

1           see the date, but don't read the content of what's  
2           in it. Okay?

3           THE WITNESS: All right.

4           A. I might not even have it. I deleted my text  
5           messages. All right. I was getting the dates  
6           mixed.

7           Q. Okay.

8           A. I met with him this year, June 22nd, I believe it  
9           was.

10          Q. Of 2017, this year?

11          A. Yeah, let me just make sure that's right. Yep.  
12          Thursday, June 22nd, 3:44 p.m.

13          Q. That's when you met --

14          A. Hold on. Hold on one sec. Friday morning so it  
15          be -- it be that Friday. So he texted me on  
16          Thursday, so it would be the next day.

17          Q. So June 23rd -- Friday, June 23rd, is when --

18          A. Is when I met him again.

19          Q. And what did you speak to the attorney general  
20          about on June 23rd?

21          A. I think they were kind of going over this, like  
22          trying to refresh my memory pretty much.

23          Q. Did they say why?

24          A. It was kind of just like this. No, I'm not sure

—KEITH MILLINGTON - 11/16/17—

1           why. But I know Lee wasn't there. He had  
2           someone -- my lawyer had someone else come with  
3           me.

4           Q. Were they preparing you for something?

5           A. It was as if they were. It kind of seemed like  
6           it.

7           Q. Did they tell you why?

8           A. No, just after they said they would -- I would  
9           hear from them in a few. I'm not sure how long  
10          they said, but --

11          Q. Did they call you back?

12          A. No, I haven't heard from them since.

13          Q. Now, you said Vinny was -- when you picked him up  
14          you said he was intoxicated?

15          A. Correct.

16          Q. Slurred speech?

17          A. Yeah.

18          Q. Not making any sense?

19          A. No.

20          Q. Was he having difficulty walking even to the car?

21          A. He was little -- probably could walk like decent.  
22          He wasn't good enough to drive or anything else.

23          Q. He was like stumble-drunk or just sideways?

24          A. Sideways swaying.

—KEITH MILLINGTON - 11/16/17—

1 Q. Okay. So -- and he was in the passenger seat;  
2 right?

3 A. Correct.

4 Q. Now, did he tell you that he went to the attorney  
5 general's office and gave a statement?

6 A. Yes, he did. I believe so.

7 Q. He went --

8 A. They went to his house, they went to his work,  
9 told me, and he didn't want to talk them.

10 Q. Right. About May 6th at 8:50 in the morning he  
11 did talk to them?

12 A. Yeah.

13 Q. Did he tell you what he said to them?

14 A. I'm unsure. No. I know he told me he was just  
15 trying to pretty much shut them up, get them to  
16 stop bothering him. They kept coming to his  
17 work, bothering him when he was trying to work.

18 Q. Did anybody from the attorney general's office  
19 tell you what Phil Gross said that he saw when  
20 they were asking you questions about what you  
21 saw?

22 A. No, I really don't who that is.

23 Q. You saw on the news that there was a guy who  
24 helped out to get the car off the police officer;

—KEITH MILLINGTON - 11/16/17—

1 right?

2 A. I might have read it. Correct.

3 Q. And you saw --

4 A. He seen him talking about a video, too.

5 Q. Yeah, same guy took a video. Do you remember  
6 reading about that?

7 A. I actually think I read about that, yeah.

8 Q. Did the attorney general's office talk to you at  
9 all about any of the things that video showed?

10 A. Nope.

11 Q. When you were telling them stuff, did they say,  
12 Hey, you know what, that's not what the video  
13 shows?

14 A. No.

15 Q. Did you feel like you had a choice to not speak  
16 to them?

17 A. I felt like I was obligated to, kind of.

18 Q. On -- did they promise with you anything?

19 A. No.

20 Q. Did they threaten you in any way?

21 A. No.

22 Q. Did -- has anyone promised you anything?

23 A. No.

24 Q. Has anyone threatened you?



—KEITH MILLINGTON - 11/16/17—

1 A. No.

2 Q. What are you doing for work now?

3 A. I work where my dad works in the office.

4 Q. For the CDTF?

5 A. No, he works for New Penn Motor Express.

6 Q. New Penn?

7 A. Yeah, behind Rensselaer County jail.

8 Q. And what are you taking, a couple of classes this  
9 semester at Hudson Valley?

10 A. Yeah, online classes, two.

11 Q. How many?

12 A. I've got to take two, and I'm done with school, a  
13 graduate.

14 Q. What do you -- what did you work for work before  
15 you went to New Penn?

16 A. I was working -- I was on the dock driving a  
17 forklift. And I switched to the office, so now  
18 I'm full time now.

19 Q. So after you graduated from high school you  
20 started at Hudson Valley?

21 A. I took the first semester off, I started in  
22 January.

23 Q. Okay. And then that first semester that you were  
24 off, did you work at your dad's place?

—KEITH MILLINGTON - 11/16/17—

1 A. Yes.

2 Q. And did you work there while you were going to  
3 school the same time?

4 A. Yeah, some days on and off. It was part time, so  
5 it was like dock casual so I could just go  
6 whenever I wanted pretty much.

7 Q. Right. Right. Did you ever have a conversation  
8 with anyone about what your statement to the  
9 attorney general's office said?

10 A. No.

11 Q. I mean anybody before today?

12 A. I mean, I probably told my dad what I saw. I  
13 mean, probably had a closed conversation.

14 Q. Did they give you a copy of your statement when  
15 you left that day?

16 A. I don't think they did. They might have gave one  
17 to my lawyer.

18 Q. Okay. Did they tell you not to talk to anyone  
19 about your statement?

20 A. I'm unsure. I mean, I probably talked my dad  
21 before though, like told him what I seen that  
22 night.

23 Q. Right.

24 A. I'm sure I called him.

—KEITH MILLINGTON - 11/16/17—

1 Q. Did you ever follow-up -- do you know who from  
2 the police department returned your phone call?

3 A. I do not.

4 Q. Did you ever try and touch base with anybody from  
5 the PD?

6 A. No. That's who I originally wanted to go to, and  
7 for some reason Lee told me to --

8 Q. That's fine. Lawyers can make decisions all the  
9 time on behalf of their client for whatever.

10 A. Yeah.

11 Q. I'm just going to go back. When the officer that  
12 was in the car in the front, when he exited his  
13 vehicle, was it your testimony that he had his  
14 weapon already drawn at that point?

15 A. Not like when he was in the car, I don't think he  
16 had his weapon drawn. I think after -- once he  
17 opened the door and he got out, that's when he  
18 drew his weapon.

19 Q. Okay. So he was outside the vehicle before he  
20 drew his weapon out of his holster?

21 A. Yes.

22 Q. And I think you indicated, and correct me if I  
23 misheard it, he was originally was holding the  
24 weapon in his right hand?

—KEITH MILLINGTON - 11/16/17—

1 A. Correct; from what saw, I believe he was.

2 Q. And was the weapon that you saw a revolver or a  
3 semi-automatic handgun --

4 MR. TORCZYNER: Or something else.

5 Q. -- or something else?

6 A. Well, based -- I mean --

7 Q. Let me ask it this way: It wasn't a long rifle;  
8 right?

9 A. No, it wasn't a long rifle.

10 Q. So was it a revolver or a semi-automatic?

11 A. It's going to be a semi-automatic pistol because  
12 I mean, I never seen a Troy cop carrying around a  
13 revolver.

14 Q. It's possible. I saw one the other day. Not on  
15 a Troy cop. What was the -- when you heard the  
16 first shot fired, right -- I want you to think  
17 back to that moment -- how much time had elapsed  
18 from the first point where you first saw the  
19 Honda coming up from your rear to the point were  
20 you heard the first shot fired?

21 A. I'm unsure because, I mean, it all happened so  
22 fast.

23 Q. Were you at that red light for more or than less  
24 than two minutes?

—KEITH MILLINGTON - 11/16/17—

1 A. More. I stalled out. I was there when it was  
2 green.

3 Q. So you were there more or less than six minutes  
4 total?

5 A. More.

6 Q. How many times did the light cycle go through  
7 before you were able to it to get out?

8 A. I think twice. Two or three times.

9 Q. From the point in time where the vehicle, that  
10 Honda came into contact with the bridge when the  
11 guy crashed, how much time elapsed from that  
12 moment when you observed that occurrence, right,  
13 to when the shooting ended?

14 A. Say that question one more time.

15 Q. From the point in time when the Honda vehicle  
16 hits the bridge, right, to point in time where  
17 the shooting ends, how much time elapsed?

18 A. Couple minutes. I'm unsure.

19 Q. Okay. Is there anything that you can think that  
20 you saw that night that we haven't asked you  
21 about?

22 A. No.

23 MR. ASPLAND: Okay. I don't have anything  
24 further. I appreciate it.

—KEITH MILLINGTON - 11/16/17—

1 MR. TORCZYNER: I have a couple more  
2 follow-ups. Thank you.

3 FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFFS  
4 BY MR. TORCZYNER:

5 Q. The top of the document that's Millington 4, you  
6 see where says "I've been duly warned and advised  
7 by Mitchell Porowski a person who has identified  
8 himself, herself as a police officer."

9 Do you see that?

10 A. Yeah, I remember him telling me that he used to  
11 be a police officer for Troy, I believe, maybe.

12 Q. So you remember him identifying himself to you?

13 A. Yeah.

14 Q. Okay. When it says "3:40" here as far as the  
15 time started --

16 A. Uh-huh.

17 Q. -- did you see somebody write that time, 3:40?

18 A. I'm unsure.

19 Q. Okay.

20 A. I didn't have this in front of me. Mitch did.

21 Q. Let's talk about this. You were -- you walk in  
22 and you start your meeting with a whole bunch of  
23 people; correct?

24 A. Correct.

—KEITH MILLINGTON - 11/16/17—

1 Q. And does Mitch advise you or warn you that he's a  
2 police officer at the beginning of the meeting,  
3 or a little further along?

4 A. I'm unsure. It might not -- it might not have  
5 even have been at this meeting that I found out  
6 that he was a police officer.

7 Q. Okay. Now, he's actually telling you in this  
8 statement that he's a police officer with the New  
9 York State Attorney General's Office? He's not  
10 telling you he was a Troy police officer? That's  
11 what it says that you were advised of?

12 A. Yeah, I don't believe he used to be a Troy cop.  
13 One of the guys there, I'm not sure who, I know  
14 was a Troy cop.

15 Q. Okay. But Mitch Porowski at this meeting advised  
16 you that he was an investigator or officer with  
17 the New York State Attorney General's Office?

18 A. Correct.

19 Q. Okay. Did he start writing before or after he  
20 advised you that he was an officer?

21 A. After.

22 Q. So he advises you that he's an officer, and then  
23 he starts writing. And it has the 5:10 p.m. on  
24 the first page and the second page of this

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1 document; right?

2 A. Yes. He didn't -- he wasn't like writing this --  
3 like I was telling you the guys the story today,  
4 he wasn't writing it as I was telling you the  
5 story. It would be like you writing it down as I  
6 was going. He did it toward the end pretty much.

7 Q. Was he taking notes during your meeting, if you  
8 saw?

9 A. Yeah, I believe they all were.

10 Q. Okay. So you don't know if 3:40 means when he  
11 started writing -- withdrawn.

12 You're telling me he didn't start writing at  
13 3:40, this statement; right?

14 A. I'm unsure. He might have filled this out at  
15 3:40. Like the top part, that's the time we  
16 probably started the meeting. But he could have  
17 wrote this. I don't remember. It was a while  
18 ago.

19 Q. It was a while ago. When counsel asked you if  
20 the officer's life was in danger and you said  
21 yes, did the officer tell you that his life was  
22 in danger?

23 A. No, he did not. But I mean, that's just from my  
24 perspective. I mean, my perspective doesn't



—KEITH MILLINGTON - 11/16/17—

1 matter. I think his life was in danger, from my  
2 point of view.

3 Q. Okay. From your point of view, did it look like  
4 he had the ability to get out of the way of the  
5 car that was moving towards him?

6 A. I'm unsure.

7 Q. What did you mean that you thought that you were  
8 obligated to meet with the attorney general's  
9 office?

10 A. That if -- like I had no other choice.

11 Q. Well, did someone tell you you were going to jail  
12 if you didn't meet with them?

13 A. No, but I mean -- I mean, I don't know. It's  
14 just who my lawyer told me to meet with, but I  
15 felt obligated to do it.

16 Q. Not like an obligation like a moral obligation?  
17 Like a legal obligation; is that what you mean?

18 A. Just like I have to -- like I have to do it, or  
19 they probably wouldn't have left me alone anyway.

20 Q. Okay. Do you see on the second page of the  
21 statement where it says -- before we even read  
22 it, you were talking about the kick.

23 At the time that you were talking to the  
24 people from the attorney general's office, did

—KEITH MILLINGTON - 11/16/17—

1           you have in your mind that you saw him try to  
2           kick the guy that was pulled out of the car?

3       A.    Yes.

4       Q.    Now, counsel pointed out to you, yes, there was a  
5           median, and it's possible that he was doing  
6           something else --

7       A.    Sure.

8       Q.    -- but your impression at the time was that he  
9           was trying to kick him?

10      A.    Yes, because he's probably still alive and doing  
11           what he was doing.

12      Q.    You say in the statement that you thought he  
13           emptied his clip. Do you see that?

14      A.    I don't see it, but I remember saying it.

15      Q.    Okay. About a dozen or so lines down, the last  
16           words on the page -- on the line are "after the,"  
17           and immediately before that is "clip," if you go  
18           towards the right of the page.

19      A.    I see it. I said it sounded like it. I didn't  
20           say he did empty his clip.

21      Q.    I'm just asking you. Have you ever fired a  
22           semi-automatic?

23      A.    Something like it.

24      Q.    Okay. Have you ever fired a handgun to the point

—KEITH MILLINGTON - 11/16/17—

1           where you heard it's clicking on empty?

2           A.    Yes.

3           Q.    That's what you meant that you thought you heard?

4           A.    No, I couldn't hear a click from where I was, but  
5                I mean, it just sounded like a lot of shots.

6           Q.    So you say it sounded like he emptied his clip.  
7                It just sounded like he shot all the bullets; not  
8                that you heard the clicking?

9           A.    Yeah, it sounded like he shot more than -- about  
10                how many bullets carries in a clip.

11          Q.    Right. But not the sound like you heard the  
12                clicking on the chamber?

13          A.    No, I did not hear the clicking on the chamber.

14          Q.    Okay. Having read over this statement, which I  
15                asked you about and John had asked you about and  
16                possibly he's going to ask you about again after  
17                I'm asking you now, you talked about how they  
18                used words that weren't your words in the sense  
19                that they reworded things that you had said  
20                because you would not normally say, I would like  
21                to say; correct?

22          A.    That's just something that wouldn't come out of  
23                my mouth.

24          Q.    But there are no facts in this statement that are

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1 not correct; is that true?

2 A. What was your question again?

3 Q. Are there any facts in this statement that are  
4 not true?

5 A. They're all true based on what I seen.

6 MR. TORCZYNER: Okay. I've got nothing  
7 further for you. I appreciate that you came down.  
8 If John is not done --

9 MR. ASPLAND: I've got a couple of  
10 follow-ups.

11 FURTHER EXAMINATION BY COUNSEL FOR THE DEFENDANTS  
12 BY MR. ASPLAND:

13 Q. The impression that there was a kick thrown was  
14 suggested to you by Porowski; correct?

15 A. No. I believe that when -- from what I seen when  
16 he pulled the guy out of the car and he was on  
17 the ground it looked like -- it looked liked he  
18 threw him a kick, but like you said, there was a  
19 barrier in the way. I could have been seeing him  
20 step over or -- or it could have been a kick.

21 Q. Now, the things that we talked about today,  
22 you've had the chance to answer those questions  
23 without somebody else writing down what you were  
24 telling like in this statement; correct?

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1 A. Correct.

2 Q. And you were able to describe for Neil and I your  
3 recollections and understanding in your own  
4 words; correct?

5 A. Correct.

6 Q. So in an instance, say, where there was  
7 information that you told us today that's not  
8 contained in Millington Exhibit 4, would it be  
9 fair for us to rely on those statements that you  
10 told us to be accurate?

11 MR. TORCZYNER: I don't understand the  
12 question.

13 Q. Do you understand the question, Keith?

14 A. Yes.

15 Q. Then it would be fair for us to understand those  
16 facts to be accurate even if they're not in  
17 Millington 4, but you've answered the questions  
18 today using those --

19 A. So you're saying even if on those questions that  
20 you guys asked today, and if I said some of them  
21 to be unsure, but yet they're in here, they're  
22 going to be true?

23 Q. Or vice versa.

24 A. Yes, true.

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1 Q. So, for instance, like your statement doesn't  
2 talk about Randy French being in a shooter stance  
3 when he's in front of Thevenin's car as Thevenin  
4 is driving at him fast; correct?

5 A. Yes. No, it does not. It does not say that.

6 Q. And Mitch Porowski didn't ask you about that; did  
7 he?

8 A. No, did not.

9 Q. And he didn't ask you to describe those  
10 conditions to him at all; correct?

11 A. No.

12 Q. So when you described them to Neil and I, you  
13 were telling it truthfully and for the first  
14 time?

15 A. Yes.

16 Q. And when you said that it was your belief that  
17 Randy French, his life was in danger,  
18 Mitch Porowski didn't ask you about that at all;  
19 did he?

20 A. I'm unsure. I might have said it. I definitely,  
21 definitely said that -- I said it in like my  
22 point of view, like put -- I said to them like if  
23 I was that police officer, like it would have  
24 been the same thing. If I seen a man coming at

—KEITH MILLINGTON - 11/16/17—

1 me with a car, what are you going to do? Your  
2 life's in danger.

3 Q. Right. And you told them that?

4 A. Yeah, and you only got a split second to think,  
5 what are you -- you're not Spiderman. What are  
6 you going to do, jump up in the air?

7 Q. Right. But you told them, and they didn't write  
8 that down?

9 A. Yeah. And they did not write it in here, like  
10 you said.

11 Q. But you thought it was important enough that you  
12 were going to tell them that because it was  
13 important to you for them to know; right?

14 A. Yes.

15 Q. And the AG's office chose not to include that  
16 important information?

17 A. Correct.

18 MR. TORCZYNER: No objection.

19 Q. And, for example, when you referenced -- the --  
20 when you told it was like one to three feet of  
21 distance between the front of Thevenin's car and  
22 that Troy PD cruiser where Randy French was  
23 standing, they didn't ask you about that, to put  
24 that in the statement; did they?

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1 A. I think it is in here. Hold on. Yeah, the only  
2 thing that's in here, it says "The Honda backed  
3 up only a couple of feet before it hit the second  
4 cop car." So they never said that. They never  
5 asked how many feet or if I seen that was between  
6 them.

7 Q. But when you were describing to them what was  
8 going on, they never asked you that question, or  
9 did you tell them that?

10 A. They might have asked, but they didn't put it in  
11 here.

12 Q. Now, the whole thing about the clip, there were a  
13 lot of shots fired in your recollection; correct?

14 A. Yes.

15 Q. That time when you fired a 9-millimeter, was it a  
16 semi-automatic?

17 A. Yes, I believe so.

18 Q. So you know that when you fire to empty, the  
19 slide sticks open --

20 A. Yes.

21 Q. -- and engage; correct?

22 A. Uh-huh.

23 Q. You didn't see that happen --

24 A. No.



—KEITH MILLINGTON - 11/16/17—

1 Q. -- with respect to Randy French?

2 A. No.

3 MR. ASPLAND: I don't have anything further.

4 I appreciate you coming you down.

5 MR. TORCZYNER: Two more questions.

6 FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

7 BY MR. TORCZYNER:

8 Q. The second shooter is not in this statement  
9 that's Exhibit 4; right?

10 A. Correct.

11 Q. When you spoke to them and they prepared this  
12 statement that's Exhibit 4, that was closer to  
13 the date of the actual events; correct?

14 A. Correct.

15 Q. Why is the second shooter not in the statement?

16 MR. ASPLAND: Note my objection.

17 Q. Okay. Withdrawn.

18 When you talk to them -- although, I don't  
19 know that I need to withdraw it.

20 MR. ASPLAND: Well, no, my objection is to  
21 the form, but I have a different reason for the  
22 form.

23 Q. Did you tell the AG's office that the second  
24 officer was also firing?

—KEITH MILLINGTON - 11/16/17—

1 A. I might have said I was unsure.

2 Q. Okay. Do you -- when you say "I might have  
3 said," do you remember telling --

4 A. I don't remember.

5 Q. Okay.

6 A. Like I said earlier, I think he did, but I'm  
7 unsure.

8 MR. TORCZYNER: I got nothing further.

9 MR. ASPLAND: I'm good. We're done.

10 (Whereupon, the examination of  
11 KEITH MILLINGTON, in the above-entitled  
12 matter was concluded at 3:13 p.m.)  
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—KEITH MILLINGTON - 11/16/17—

1 STATE OF NEW YORK )  
2 ) ss:  
3 COUNTY OF )  
4

5 I, KEITH MILLINGTON, have read the foregoing  
6 record of my testimony taken at the time and place noted  
7 in the heading hereof, and I do hereby acknowledge it to  
8 be a true and accurate transcript of same.  
9  
10  
11  
12

13 \_\_\_\_\_  
14 KEITH MILLINGTON  
15  
16

17 DATED: \_\_\_\_\_  
18

19 Sworn to before me this \_\_\_\_\_  
20 day of \_\_\_\_\_, 20\_\_  
21

22 \_\_\_\_\_  
23 Notary Public  
24

—KEITH MILLINGTON - 11/16/17—

C E R T I F I C A T I O N

I, MICHELE AMBROSINO, a Shorthand Reporter and  
Notary Public within and for the State of New York, do  
hereby CERTIFY that prior to being examined, the witness  
named in the foregoing deposition was duly sworn to  
testify the truth, the whole truth and nothing but the  
truth.

That said deposition was taken down by me in  
shorthand at the time and place therein named and  
thereafter reduced by me to typewritten form and that the  
same is a true, correct and complete transcription of  
said proceedings.

Before completion of the deposition, review of the  
transcript was requested. If requested, any changes  
made by the deponent (and provided to the reporter)  
during the period allowed are appended hereto.

I further certify that I am not interested in the  
outcome of this matter.

Michele Ambrosino  
MICHELE AMBROSINO  
Court Reporter

## KEITH MILLINGTON - 11/16/17

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